

**ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING**

JF, a minor, by and through his/her Parent(s),

Petitioners,

Case No. 2020-DP-0207

v.

Mary Jo Strusz

██████████ School District ██████████

Impartial Hearing Officer

Respondent.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

PROCEDURAL BACKGROUND

Petitioners are the parents (“Parents”) of JF (“Student”), an eight-year-old student who has been found eligible for special education and related services under the categories of autism and Other Health Impairment.¹ Student currently attends PPES, a District elementary school.²

On June 1, 2020, Parents filed a Due Process Complaint (“DPC”) against the City of ██████████ School District ██████████ (“District”) pursuant to IDEA.³ This Hearing Officer (“IHO”) was appointed to preside over this case on June 16, 2020.⁴

¹ IHO- 1. (References to the record in this case are designated “IHO”).

² Personally identifiable information is in Appendix A.

³ IHO. 1. There was a discrepancy as to date filed, the parties proceeded with this date, by Agreement, at a status conference.

⁴ IHO 4.

The IHO issued an initial status call letter, preliminary and standing orders, hearing process guidelines and rights of the parties on June 17, 2020.⁵ The District failed to submit a timely response, the Response was filed on July 16, 2020.⁶ The parties participated in mediation on July 24, 2020, however the parties were unable to resolve the issues raised in DPC..⁷ Prehearing conference disclosures were timely filed July 29, 2020.⁸

The first prehearing conference was conducted by Zoom video conference on July 31, 2020.⁹ During the prehearing conference, the due process hearing was scheduled for September 9, 10, 11 and 14, 2020.¹⁰ On August 2, 2020, Parents withdrew Issue Three of their DPC.¹¹ The Prehearing Report and Order was entered on August 4, 2020.¹²

The District subsequently filed a motion requesting extension of the 45-day hearing decision timeline to accommodate the scheduled due process hearing dates. The hearing dates were changed to September 10, 11, 14 and 15, 2020 following an issue regarding scheduling. A joint motion to extend the decision date to September 29, 2020.¹³ This IHO granted the extension on September 16, 2020.¹⁴

⁵ IHO-. 5.

⁶ IHO- 18.

⁷ IHO 24a.

⁸ IHO 21, 22.

⁹ IHO 24.

¹⁰ Id.

¹¹ IHO 23, 24b.

¹² IHO. 24.

¹³ IHO 66.

¹⁴ IHO 67.

On August 12, 2020, Parents filed a Second Due Process Complaint (“2nd DPC”) against the District pursuant to IDEA,¹⁵ and filed a motion on August 14, 2020 to consolidate the DPC and the 2nd DPC.¹⁶ On August 21, 2020, the District filed a response to the 2nd DPC.¹⁷ The cases were consolidated on August 21, 2020¹⁸ and the prehearing conference on the Consolidated Complaint (“CDPC”) was set for August 21, 2020.¹⁹

The prehearing conference on the CDPC was conducted by Zoom video conference on August 21, 2020,²⁰ and the Prehearing Report and Order as Supplemented by the Additional Prehearing Conference on 8-21-20 was entered on August 23, 2020.²¹

The due process hearing took place via Zoom video Conference on September 10, 11, 14 and 15, 2020.²² An official court reporter and Spanish translator were provided by the District for all hearing dates. The hearing was closed to the public. Witnesses were called by the Parents and the District.²³

At the conclusion of the evidence presentation, documents offered into evidence, by either Party, which were not objected to or which were admitted over objection, were admitted into evidence. IHO admitted the following exhibits:²⁴ For the Parents: P1-

¹⁵ IHO. 25.

¹⁶ IHO 27.

¹⁷ IHO. 32, 37.

¹⁸ IHO. 35.

¹⁹ IHO. 31.

²⁰ IHO. 42g.

²¹ IHO. 44.

²² The IHO delayed the hearing by one day due to the parties failure to agree upon witness scheduling. The IHO scheduled the witnesses, and testimony times, for the first two days of hearing.

²³ Id.

²⁴ Each exhibit is identified by “P” for Parents, “SD” for District and includes the exhibit number and specific page in the exhibit.

P15;²⁵ P17-25; P27 (except pages 395-397); P28-P29; P31-P38; P43-P44(only pages 657-664); P53(only pages 657-670); P68-P70 (stipulated)²⁶; P72 (stipulated); P77; P78 (stipulated); P82; P84; P85 (videos); P86-P88; P91 (stipulated); P92; P95; P99; P104; P109; P111; P113-P120. For the District: SD3; SD6-SD8; SD11; SD13; SD14; SD16; SD17; SD19-SD21; SD25-SD32; SD34. Proposed exhibits submitted at the five-day disclosure deadline but not expressly enumerated above were not admitted into evidence and were not considered in the preparation of this Final Determination and Order.

No written transcript has been provided and this decision is based on the IHO's personal notes and recollection. In rendering this decision, the IHO has considered all documents entered into evidence, testimony by the parties' witnesses, the parties' opening statements and closing arguments, the parties' suggested case law²⁷, as well as independent research. This decision was issued within ten calendar days, excluding Saturdays, Sundays and any state holidays, after the conclusion of the hearing as required by Illinois law.²⁸

ISSUES AND REMEDIES REQUESTED

Parents' CDPC raised the following issues, and this IHO certified the following issues at the PHCs for adjudication at the due process hearing:

- I. Issue One:** Whether the District failed to conduct evaluations of Student, from June 1, 2018 to the date of hearing, in a timely and complete manner in all areas of suspected disability, which were sufficiently comprehensive to identify all Student's special education

²⁵ The Exhibit was withdrawn during the Sped Director testimony and admitted into evidence during the Vocational Counselor testimony.

²⁶ The parties entered into a written stipulation regarding records on September 7, 2020.

²⁷ Copies of the closing statements and the supporting case law were provided to the IHO by the parties.

²⁸ 105 ILCS 5/14-8.02a(g55)(5).

and related service needs, thereby denying him a FAPE in the least restrictive environment.

- II. Issue Two:** Whether the District's Individualized Education Programs ("IEP") dated May 2, 2018, February 26, 2019 April 29, 2019 April 15 2020 for Student were reasonably calculated to provide Student with a FAPE by providing Student with measurable and appropriately ambitious goals across all areas of deficit, research based instruction for students with autism, bilingual education, staff training and appropriate supports, services, programming, and placement.

- III. Issue Three:** Was withdrawn by Parents.

- IV. Issue Four:** Whether Parents were prevented from being equal participants in the May 2, 2018, February 26, 2019, April 29, 2019, and April 15, 2020 IEP meetings due to the District failing to provide Parents with complete and timely information about Student's program, placement, and provision of FAPE to Student.

- V. Issue Five:** Whether the District's failure to complete the evaluations identified and agreed to in the February 5, 2020 domain and discuss them at an IEP meeting within a sixty (60) school day timeframe denied Student a FAPE.

- VI. Issue Six:** Whether the District prevented Parent from meaningful participation in the April 15, 2020 IEP meeting by denying her equal access and opportunity to participate by video conference as was provided to the school district staff, instead advising her that she could only participate by telephone.

- VII. Issue Seven:** Whether the District's failure to consider other types of placement for Student in the May 2, 2018, February 26, 2019, April 29, 2019, on April 15, 2020 IEPs and continued Student's placement in a cluster classroom denied him a FAPE.

- VIII. Issue Eight:** Whether the District failed to implement the April 29, 2019 and April 15, 2020 IEPs remotely during that period of Student's e-learning, thereby denying Student access a FAPE.

- IX. Issue Nine:** Whether the District failed to schedule an IEP meeting within ten (10) days of the July 24, 2020 receipt of the May 2020 Independent Education Evaluation ("IEE") done at private expense by

Dr. [REDACTED] resulting in a lack of timely consideration of the IEE by the IEP team and a denial of FAPE to Student.²⁹

Parents' CDPC seeks the following remedies:

- I. Compensatory education for Student to put him in the place that he would have been in but for the District's failure to timely and appropriately evaluate him in all areas a suspected disability;
- II. Compensatory education for Student to put him in the place that he would have been an but for the District's failure to provide FAPE to Student for the two years prior to filing the due process complaint;
- III. Reimburse Parents for the May 2020 psychological evaluation by [REDACTED] Ph.D.' in the amount of \$4600;
- IV. Fund independent educational evaluations in OT, speech and language, assistive technology ("AT"), an alternative augmentative communication device ("AAC"), as well as a functional behavioral assessment ("FBA") by evaluators of Parents' choice, along with follow-up observations and training by these providers and their participation in IEP meetings;
- V. Prospective placement for Student in a non-public, state-approved therapeutic day school that provides research-based instruction to students with autism, along with transportation for ESY 2021 and the 2020-21 school year;
- VI. An aide for Student on the bus during transportation; and
- VII. Any other relief that the hearing officer deems appropriate.

STIPULATED FACTS³⁰

For the due process hearing, the parties entered into the following joint stipulations of fact:

1. At all times relevant to this hearing Student, J.F., has resided and continues to reside within the boundaries of City of [REDACTED] School District [REDACTED] (" [REDACTED] ");
2. The student has been enrolled as a student within [REDACTED] since the fall of 2015.

²⁹ This is the only issue from Parents' 2nd DPC. All other issues were raised in Parents' original DPC.

³⁰ IHO 60 and 65,

3. The student attended pre-K at [REDACTED] at PPES³¹ taught by KT³² for most of the 2016-17 school year.
4. At the end of the 2016-17 school year for approximately one month, after he was found eligible for special education services and provided with an IEP, J.F. was placed in a cluster classroom at AECES.³³
5. The student continued to attend school at [REDACTED] specifically PPES for kindergarten through 2nd grade, the 2017-18, 2018-19 and 2019 -20 school years.
6. J.F.'s parents signed consent for an initial case study evaluation ("CSE") on January 27, 2017.
7. J.F.'s initial CSE was reviewed at an Eligibility Meeting held on April 18, 2017.
8. J.F. was found eligible for special education services and supports under the Autism and Other Health Impairment (AD/HD) eligibility categories. An IEP was drafted for him that same day.
9. IEP meetings were also conducted for J.F. on May 2, 2018, February 26, 2019 and April 29, 2019.
10. J.F.'s April 29, 2019 IEP lists February 27, 2018 results of the Access Assessment. The results state that J.F. was assessed in the Components of Listening, Speaking, Reading, and Writing. He scored a Proficiency Level 1 in each component for an Overall Composite Score of Proficiency Level 1.
11. On February 5, 2020 a Domain Meeting was convened to discuss J.F.'s triennial evaluation.
12. Consent for the requested evaluations was signed on February 6, 2020.
13. An Eligibility/IEP meeting was scheduled for April 15, 2020 to consider these evaluations and conduct J.F.'s annual review.
14. The Parties agree to a stipulation that Mr. Jose Morales, [REDACTED] Bilingual Specialist, did not attend Student's IEP meetings which took place on May 2, 2018 and April 15, 2020.
15. The Parties agree to a stipulation that Mr. Jose Morales, [REDACTED] Bilingual Specialist, was not involved in Student's IEP revision dated February 29, 2019.

³¹ Personally Identifiable information is in Appendix A.

³² Personally Identifiable information is in Appendix A.

³³ Personally Identifiable information is in Appendix A.

16. The Parties agree to a stipulation that [REDACTED] of Naperville, Illinois, is an ISBE approved non-public therapeutic day school.

FINDINGS OF FACT

Background: where student was prior to the February 6, 2017 eligibility meeting.

1. Preschool. In the Fall of 2015, Student was 3 1/2 years old and entered pre-school at B-C a District school.³⁴ The preschool was Spanish speaking. As of August 27, 2015, Student was an English language learner (“ELL”).³⁵ On the last day of school Parent was informed that Student had difficulty paying attention and would not sit still when asked. The Student’s teacher suggested that Student be evaluated. The Pre-school teacher did not refer Student for an evaluation.³⁶ Parents presented video evidence to confirm that Student was able to identify letters (in Spanish), and was physically able to ride a big wheel tricycle using his feet rather than pedals.³⁷

2. Pre-Kindergarten. For the 2016-17 school year, Student was placed in an English-speaking, general education, pre-kindergarten class at PPGS.³⁸ Student’s Pre-K teacher found that he was not paying attention and would not stay seated. Pre-K teacher told Mother she needed to have Student evaluated.³⁹ Pre-K teacher did not refer Student for an evaluation.

3. Private Neuropsychological. In December 2016, Parents used their private medical insurance to obtain a Neuropsychological evaluation for Student through T Memory Center (“TMC”).⁴⁰ TMC’s evaluation indicated Student exhibited neurocognitive impairments in the areas of attention and executive functioning coupled with restlessness and hyperkinetic activity was consistent with Attention Deficit Hyperactivity Disorder (“ADHD”), Combined Type.⁴¹ Student also received a provisional diagnosis of Autism Spectrum Disorder⁴² (Pervasive Development Disorder, Not Otherwise Specified (NOS). Cognitive testing demonstrated a range between low average and average. However, the diagnoses were tempered because the evaluation acknowledged: “English as second language is preventing a distinct profile to emerge and thus, interventions to address such will be a prudent course of action to aid in this differential diagnosis.” Further, the evaluation acknowledged that “it is possible that his dual-language accounted for some of the reduction in receptive and expressive

³⁴ Stipulation and SD Exhibit 054. Personally, identifiable information is on Exhibit “A”

³⁵ S-Counselor testimony.

³⁶ Mother testimony.

³⁷ Parent Exhibit 85 (video).

³⁸ Mother, K-1 teacher, and S-Counselor testimony.

³⁹ Mother testimony.

⁴⁰ Mother testimony.

⁴¹ Parent Exhibit 1 (5).

⁴² Parent Exhibit 1 (6)

language.”⁴³ TMC recommended occupational therapy, speech therapy, applied behavior analysis (“ABA”), and to retest Student in one year.⁴⁴ Parents provided a copy of the evaluation to [REDACTED] on January 11, 2017.⁴⁵ The testing was done in English and it is unclear to what extent this interfered with the validity of the testing.⁴⁶

4. Private Services. Parent immediately arranged for Student to receive private occupational and speech therapy.⁴⁷ Parent also arranged for ABA therapy. Student has received private weekly Speech and Language intervention from February 2017 to at least May 2020, Occupational Therapy weekly from February 2017 to March 2020 (covid suspension),⁴⁸ and ABA 8 hours weekly from January 2017 until June 2018. ⁴⁹

5. Domain Meeting. January 19, 2017, the District held a consent assessment planning meeting to review the TMC evaluation and obtain consent for Student’s initial District evaluation. The District proposed evaluating Student in the areas of: social/emotional status; general intelligence; academic performance; communication status; and motor abilities. Parents signed consent on January 27, 2017.⁵⁰

6. District Speech/Language Evaluation. On February 17, 2017 the SLP-1 conducted Student’s initial Speech-Language Assessment.⁵¹ The assessment states “the Student’s primary language is Spanish.”⁵² The evaluation consisted of a health history, record review, classroom observations, interview, two formal assessments, and a summary of what the Mother and K-1 teacher reported.⁵³ It notes no reliable results could be obtained from Student’s Hearing Screening on 11/7/2016.⁵⁴ During classroom observations Student responded to yes/no questions and simple WH questions in 4/4 opportunities. Student was able to state his name and age. Information obtained during observation assessment was judged to be a low estimate of Student’s abilities. SLP-1 conducted two formal assessments, the Peabody Picture Vocabulary Test (“PPVT-4⁵⁵”) and the Oral and Written Language Scales (“OWLS”).⁵⁶ ⁵⁷The PPVT-4 was used to gather description information regarding comprehension, and the OWLS to gather information on expressive language and sentence structure. The first test session, the

⁴³ Parent Exhibit 1 (P-6).

⁴⁴ Mother testimony and Parent Ex. 1.

⁴⁵ Parent Exhibit 18 (163).

⁴⁶ Dr. [REDACTED] testimony.

⁴⁷ Mother Testimony

⁴⁸ Parent Exhibit 1 (P-105_

⁴⁹ Mother testimony. ABA therapy was discontinued in June 2018 due to a change in insurance providers and family financial situation. P-104, 105.

⁵⁰ Stipulation of Fact and Parent Exhibit 17.

⁵¹ Parent Exhibit 11.

⁵² Parent Exhibit 11 (129).

⁵³ SLP-1 testimony.

⁵⁴ Parent Exhibit 11 (129).

⁵⁵ This testing is referred to as PPVT2 and PPVT3 throughout the assessment, SLP-1 testified these were typographical errors.

⁵⁶ SLP-1 testimony.

⁵⁷ P Parent Exhibit 11 (129).

PPVT-4 was done in English, the session lasted approximately 15 minutes.⁵⁸ During session two, a Spanish translation was provided, the OWLS could not be completed because Student was noncompliant, and could not be redirected. On the PPVT-4 Student had a raw score of 32, Standard Score 63 and on the OWLSII Student had a raw score of 10, Standard Score 71.⁵⁹ The tests were only normed for English, which means the testing could be slightly lower and Student's overall abilities could be higher than reported.⁶⁰ The assessment specifies: "Teachers also report [Student] will repeat words and words do not make sense, and Teachers reported [Student] uses delayed echolalia."⁶¹ . The evaluation recommended that Student has a communication impairment that adversely affects educational performance. It could not be determined if Student's difficulties were a language disorder or caused by a language barrier,⁶² 90% of Student's responses were in English,⁶³ and SLP-1 felt English was Student's preferred language in the school setting.⁶⁴ SLP-1 did no additional testing.⁶⁵ This report was reviewed at Student's April 2017 eligibility meeting. Student was found eligible for speech/language services.

7. Review of Outside Evaluation. On March 2, 2017, a District Psychologist, who did not testify, completed the District's review of the TMC December 2016 neuropsychological evaluation.⁶⁶ The Psychologist performed the Gilliam Autism Rating Scales- Third edition (GARS-3), the behavior checklist was allegedly given to the Mother and the Pre-K teacher, only the Pre-K teacher results are reported. The report indicates the Adaptive Behavior Assessment System was sent out, does not indicate to whom it was sent, and the results were never added.⁶⁷ Finally, the Psychologist gave Student a DSM-5 rating for level 3 severity requiring substantial support for the Student. This is a Doctorate level determination; this Psychologist did not have the credentials to determine and is in direct conflict with the TCM evaluation she was reviewing.⁶⁸

8. District Occupational Therapy Evaluation. In the Spring of 2017, the O/T completed the Student's only District occupational therapy evaluation.⁶⁹ O/T determined Student exhibited independent functioning issues in the classroom and

⁵⁸ SLP-1 testimony.

⁵⁹ Parent Exhibit 11 (132).

⁶⁰ SLP-1 testimony

⁶¹ P131.

⁶² SLP -1 testimony.

⁶³ Parent Exhibit 11 (130).

⁶⁴ SLP-1 testimony.

⁶⁵ SLP-1.

⁶⁶ Parent Exhibit 12.

⁶⁷ Dr. [REDACTED] and Parent Exhibit 1 (135).

⁶⁸ Dr. [REDACTED] testimony and P-135.

⁶⁹ Parent Exhibit 14. The O/T testified he created a therapy intervention plan for Student SD-17. However, the plan presented during testimony was dated 4/?/19, and due to the confusion of when it was created, it is given little probative value. This document was not provided to the Parents.⁶⁹

found Student eligible for occupational therapy services.⁷⁰ The O/T determined Student uses an age appropriate grasp patten (tripod grip) on writing utensils. “[Student] can identify his name in print and all letters/numbers/shapes.”⁷¹ “Student works independently.”⁷² Student perseverates on objects, people or things, struggles to maintain appropriate eye contact, is uncooperative struggles with transitions, poor safety awareness, unable to follow one-step directives, and uses physically aggressive behavior to self or others.⁷³

9. Parent Evaluations: Contemporaneously with the District’s evaluations, Parents arranged for a series of private evaluations:

a. February 6 and 13, 2017, Occupational Therapy Evaluation by [REDACTED] Therapy. This evaluation confirmed the District’s OT evaluation stating:, Student uses an age appropriate tripod grip, and could copy a vertical line, horizontal line, and circle.⁷⁴ No evidence was presented to demonstrate this evaluation was provided to the District.

b. [REDACTED] Therapy completed an applied behavior analysis (“ABA”) evaluation on April 11 and 13, 2017. Testing was done in English; several testing items were not completed due to a language barrier. During observations, Student continuously put non-edibles into his mouth. BCBA recommended 1:1 treatment by a behavioral therapist 30 hours a week.⁷⁵ No evidence was presented to demonstrate this evaluation was provided to the District.

10. Eligibility Meeting. On April 18, 2017, Student’s initial CSE was reviewed at an eligibility meeting.⁷⁶ The IEP team reviewed the TMC evaluation and accepted the findings as valid, and the team believed this was an accurate estimate of Student’s current functioning.⁷⁷ Student was found eligible for special education services and supports under the autism and other Health Impairment (AD/HD) eligibility categories.⁷⁸ The Parents consented to the initial provision of special education services.⁷⁹ An IEP was drafted for Student the same day.⁸⁰

⁷⁰ O/T testimony.

⁷¹ Parent Exhibit 14 (143).

⁷² Parent Exhibit 14 (143).

⁷³ Parent Exhibit 14 (143).

⁷⁴ Parent Exhibit 2.

⁷⁵ Parent Exhibit 3.

⁷⁶ Stipulation of Fact 7.

⁷⁷ Parent Exhibit 18 (163)

⁷⁸ Stipulation of Fact 8.

⁷⁹ Parent Exhibit 18 (171).

⁸⁰ Stipulation of Fact 8.

11. Initial IEP. Student's first IEP was drafted on April 18, 2017. The IEP specified Student's primary language spoken in the home as English and Secondary as Spanish.⁸¹ This is in direct contradiction to the findings of the District evaluator.⁸²

a. The IEP specifies Student's strengths, including: Recognizing and naming a few letters in Student's name; makes letter strings, uses controlled linear scribbles, and verbally counts.⁸³ Student was provided with ten (10) goals. The present level of academic achievement and functional performance is the same for all ten goals. Student's is reported to use three-four word sentences; sings songs and recites rhymes and refrains with repeating initial sounds, recognizes and names a few letters in own name; shows understanding that text is meaningful and can be read; makes letter strings; uses controlled linear scribbles; is beginning to seek to do things for self. Other considerations are the same across all goals: "[Student] is a general education student in the inclusion setting." Student is very easily distracted and does not know how to regulate his emotions when he is upset, Student makes verbal protest and echolalia.⁸⁴ The IEP provides an LRE placement for the 2016-2017 school year that general education was rejected, attempted and found not sufficient. General education with special education support 20% or less was rejected because it was not sufficient to meet Student's academic needs, behavioral/emotional needs.⁸⁵ General education with special education support 21-60% was rejected and found not to meet the academic needs or behavioral emotional needs. General education with special education support over 60% of the school day outside general education is accepted because Student needs a lower student/teacher ratio and a small structured setting.⁸⁶ The LRE grid 2017-2018 has exactly the same findings and places Student in special education 1475 MPW.⁸⁷ At the meeting Parents were informed the District would find an appropriate classroom to educate Student.⁸⁸

b. Although the speech/language evaluation found teachers reported echolalia, no goal was written to address this issue.

c. The O/T wrote Student one occupational goal for handwriting, to trace Student's first name.⁸⁹ Student was provided with ten (10) goals. The The IEP team provided Student with services for: Speech (30 mpw); social work (15 mpw), occupational therapy (30 mpw),⁹⁰ and placed student in a separate classroom with a

⁸¹ Parent Exhibit 18 (175). The bi-lingual specialist who signed into the meeting was Student's K-teacher. The IEP notes Spanish and English are spoken in the home. Student uses both languages but did not appear to benefit from translation during assessments. (P-179).

⁸² Parent Ex. 13.

⁸³ Parent Exhibit 18 (176).

⁸⁴ Parents exhibit 18.

⁸⁵ Parent Exhibit 18 (219-220).

⁸⁶ Parent Exhibit 18 (220).

⁸⁷Parent Exhibit 18 (221-222)

⁸⁸ Mother testimony.

⁸⁹ O/T testimony and Parent Exhibit 18 (192)

⁹⁰ Parent Exhibit 18 (219).

significantly modified curriculum.⁹¹ Student was removed from the general education classroom 70% of the time.⁹² Student did not receive ESY⁹³

d. After the meeting, Student was assigned to a cluster program at AECES for the remainder of the school year.⁹⁴ No placements were discussed with Parents.⁹⁵

12. Kindergarten. In September of 2017 Student was placed in an English speaking Kindergarten cluster classroom at PPGS, which used a significantly modified curriculum.⁹⁶ Student was assisted by a shared Spanish speaking paraprofessional.⁹⁷ The classroom did not provide any research based instruction for students with autism.⁹⁸ Student's seat was located in the front half of the classroom where he could communicate directly with the teacher. Other students who needed one to one assistance were at the back.⁹⁹

13. Cluster program. The District's cluster programs provide for students who need a significantly modified curriculum, and need special education services in over 60% of the school day.¹⁰⁰ The District's Procedural Manual issued by the Office of Diverse Learner Supports and Services ("ODLSS") states: "The significantly modified curriculum only applies to students with the most significant intellectual disabilities who meet the criteria to participate in the dynamic Learning Maps Alternate Assessment (DLM-AA).¹⁰¹ Significantly modified curriculum changes what is being taught (not how the material is taught), which requires the standards to be significantly altered to meet the individual student's needs."¹⁰² To be placed in a cluster classroom Student would have to have a diagnosis of a cognitive disability.¹⁰³ Student did not meet the criteria for the DLM-AA.¹⁰⁴ Student was not diagnosed with an intellectual disability.¹⁰⁵

14. Access Assessment. On September 5, 2017, Student took the Access Assessment ("Access") through the District, the results state Student was assessed in the Components of Listening and Speaking. Student scored a Proficiency Level 1 in each

⁹¹ Parent Exhibit 18 (223).

⁹² S-Counselor and Parent Exhibit 18 (221)

⁹³ Parent Exhibit 18 (224).

⁹⁴ Mother testimony.

⁹⁵ Mother testimony.

⁹⁶ K-1 teacher testimony and S-Counselor testimony.

⁹⁷ Mother testimony.

⁹⁸ K-1 teacher testimony.

⁹⁹ Mother testimony.

¹⁰⁰ S-Counselor testimony.

¹⁰¹ At the IEP meeting on May 2, 2018 (P-246) and the February 26, 2019, Student was found eligible to participate in and take the DLM-AA. (P-310).

¹⁰² Parent Exhibit 72 (852).

¹⁰³ Case Manager testimony.

¹⁰⁴ S-Counselor testimony and Parent exhibit 111.

¹⁰⁵ K1-teacher testimony.

component for an Overall Composite Score of Proficiency Level 1.¹⁰⁶ There is no interpretation regarding what level of proficiency means, the Access testing was never discussed at an IEP meeting.¹⁰⁷ The [REDACTED] bilingual specialist did not attend Student's May 2, 2018 IEP meeting.¹⁰⁸ The K-1 teacher did not know what this rating meant, and believed Student was getting consultive services from the bilingual specialist.¹⁰⁹ No consultative bilingual services are in the Student's IEP.¹¹⁰

15. Second Access. On February 27, 2018, Student was given the Access. The results state Student was assessed in listening, speaking, reading, and writing. Student scored a proficiency level 1 in each component for an Overall proficiency level 1.¹¹¹ This testing was not reviewed in the May 2, 2018 IEP,¹¹² and was not addressed until the April 29, 2019 IEP.¹¹³ There is no interpretation regarding what level of proficiency means. The [REDACTED] bilingual specialist did not attend Student's May 2, 2018 IEP meeting.

16. Student's Second IEP. On May 2, 2018, an IEP meeting was held.¹¹⁴ Mother was present by telephone. Mother expressed concerns about Student not knowing skills a first grader should know. Mother asked for additional supports for speech and OT.¹¹⁵ District did not address Mother's concerns about lack of basic skills.¹¹⁶

a. The IEP, under academic needs, states: "[Student] has made limited progress this year in terms of academics and his progress has been inconsistent. [Student] is not able to identify all letters in his first name and is unable to state or recognize his last name. Student is unable to identify any sight words from the preprimer or primer word lists. [Student is unable to rote count or count using one to one correspondence up to 10."¹¹⁷

b. Student took the Orton-Gillingham Beginning Reading Skills Assessment in April of 2018, the results indicated Student was able to identify 3/26 uppercase letters, 3/26 lower case letters, and produce 1 letter sound.¹¹⁸

c. Other considerations used by the IEP team in drafting Student's 2018 IEP goals acknowledges that Student's disability severely impacts his involvement

¹⁰⁶ P-227. A 2019 WIDA alternate access testing indicates scores range from A-1 to P-3. (Parent Exhibit 15). There is no interpretation for Student's score of 1.

¹⁰⁷ K-1 teacher testimony.

¹⁰⁸ Stipulation.

¹⁰⁹ K-1 teacher testimony.

¹¹⁰ K-1 testimony and P-232.

¹¹¹ Parent Exhibit 18 (352).

¹¹² Parent Exhibit 18 (227).

¹¹³ Parent Exhibit 25.

¹¹⁴ Parent Exhibit 19.

¹¹⁵ Mother testimony and P-231.

¹¹⁶ Mother testimony.

¹¹⁷ Parent Exhibit 18 (228).

¹¹⁸ Parent Exhibit 18 (228).

and progress in the general education curriculum, and he requires a significantly modified curriculum that focuses on functional communication, independent functioning, and social emotional skills in a small group setting. Student requires moderate prompting.¹¹⁹

d. The occupational therapy handwriting goal, to trace Student's first name, remained the same as Student's 2017 goal.¹²⁰ The IEP provides a collaboration between O/T, general education and K-1 teacher to address Student's sensitivity to environmental sensations, sensory processing and self-regulations abilities for 15 minutes quarterly.¹²¹ There are no other occupational therapy goals.

e. The IEP provides a social skill goal to identify social emotion, but there is no baseline for this goal.¹²² There is a goal for task completion goal, which does not measure being on task.¹²³ There is an independent functioning goal, which acknowledges Student is using a right hand fist ed grasp on utensils, and calls for Student to trace his name with minimal assistance, but there is no definition of minimal assistance rendering it un-measurable.¹²⁴ There was no goal for peer interactions.¹²⁵

f. Student had met his direct social work goal and S/W discharged him from direct social work minutes. Student still received 15 consultative minutes per quarter.¹²⁶

g. During the school year, Student exhibited issues with elopement and putting objects into his mouth.¹²⁷ To address this behavior, the K-1 teacher collected Student's data to support a request for a dedicated paraprofessional.¹²⁸ The Parents were unaware this data was being collected, and the District request consent. The District did not provide this data to the Parents.¹²⁹ K-1 teacher submitted a paraprofessional justification form to the District on April 30, 2018, which was approved prior to the May 2, 2018 IEP meeting.¹³⁰ There was no goal written for elopement.¹³¹

h. The data was also used to support a functional behavioral analysis ("FBA"). The FBA was to target the inappropriate behavior of elopement (20 times per day), and indicates the triggers are whole group instruction, verbal direction,

¹¹⁹ Parent Exhibit 19.

¹²⁰ P-267.

¹²¹ O/T testimony this is a "sensory diet" goal and P-244.

¹²² P-265.

¹²³ K-1 teacher testimony and P-263.

¹²⁴ K-1 teacher testimony and P-267

¹²⁵ Parent Exhibit 19.

¹²⁶ Social Worker testimony and P-269.

¹²⁷ K-1 teacher testimony.

¹²⁸ K1-teacher testimony and P-286.

¹²⁹ Mother testimony and K-teacher testimony.

¹³⁰ K-1 testimony and O-282.

¹³¹ K-1 testimony.

and transition cues.¹³² This evaluation requires Parental Consent.¹³³ The Parents did not consent.¹³⁴ The functional behavior plan (“BIP”) was presented at Students IEP meeting, addressed elopement only, and did not provide any training to assist the paraprofessional on plan implementation¹³⁵ There is no goal that is aligned with the BIP.¹³⁶

i. District provided Student with a dedicated paraprofessional for behavior. Mother believed a dedicated paraprofessional would provide Student with additional support. Mother did not understand that the dedicated professional was being provided to Student, in part, to address Student’s elopement and putting inedible objects into his mouth.¹³⁷ Student’s IEP did not include a goal for eloping, transitioning, or for not putting inedible items in his mouth.¹³⁸ The IEP provides “[Student] requires dedicated paraprofessional support to stay in close proximity during instruction in order to stay engaged, provide positive reinforcement when [Student] is engaged.”¹³⁹ Immediately following it provides for shared paraprofessional support for verbal prompting, visual prompting, and gestural prompting. It is only for physical prompting that a dedicated paraprofessional is provided.¹⁴⁰ This is consistent with the provision of paraprofessional support throughout the rest of Student’s IEP.¹⁴¹ The meeting lasted about one hour.¹⁴²

17. ADDITIONAL PARENT PROVIDED EVALUATIONS IN 2018:

a. On February 3, 2018, Student underwent a private Occupational Therapy re-evaluation at [REDACTED] Therapy. Student was using a dynamic quadruped pencil grip, holding the pencil lightly which suggested decreased hand strength. Concerns regarding Student’ muscle tone were also revealed at this time.¹⁴³ There is no evidence this evaluation was provided to the District.

b. On March 2-6, 2018, a BCBA Progress Report was completed for Student’s private ABA therapy. It reported Student continued to demonstrate self-injurious behavior. ABA was recommended for 30 hours per week.¹⁴⁴ There is no evidence this evaluation was provided to the District.

¹³² K-1 teacher testimony and P-274.

¹³³ K-1 teacher testimony.

¹³⁴ Mother testimony. The District provided no evidence of consent.

¹³⁵ K-1 teacher testimony and P-275-276.

¹³⁶ Parent exhibit 19 and P-96.

¹³⁷ Mother testimony and P-233-235.

¹³⁸ K-teacher testimony and Parent Ex. 19.

¹³⁹ Parent Exhibit 18 (234).

¹⁴⁰ Parent Exhibit 18 (235).

¹⁴¹ Parent Exhibit 18 .P-235,236,237,238,239, 240, 241.

¹⁴² Mother testimony,

¹⁴³ Parent Exhibit 10(104-105).

¹⁴⁴ Parent Exhibit 10(102)

c. In May 2018, Student underwent a neuropsychological re-evaluation through TMC, expressed concerns at that time included: Ongoing struggles with language, attention, and eating difficulties; behavioral regulation (hits, screams, runs and slams doors); and Poor academic progress. Student is alert and oriented, Student's gait was normal and no gross motor impairments were noted. Student required significant redirection to remain on task, and testing needed to be abbreviated.¹⁴⁵ There is no evidence of this re-evaluation being presented to or considered by the District.

d. On June 7, 2018, Student underwent a Speech-Language re-evaluation with [REDACTED] Therapy. Diagnoses of Autism Spectrum Disorder and Mixed Receptive/Expressive Language Disorder were indicted. Student had mastered the following skills: identifies and answers 'who/what/where' question with 80% accuracy; increased his ability to produce basic pronouns, and label accurately during turn taking tasks; and identifies basic objects based on their function and category. It was noted Student's preferred language is Spanish.¹⁴⁶ There is no evidence of this re-evaluation being presented to or considered by the District.

18. ABA concludes. In June 2018, the Parents stopped private ABA therapy due to a change of insurance and financial concerns. in June 2018.¹⁴⁷ The K-1 teacher knew the ABA therapy was stopped.¹⁴⁸ The District took no action.

First grade forward The May 2, 2018 IEP is the IEP implemented during the statute of limitations period beginning June 1, 2018.¹⁴⁹

19. First Grade. During school year 2018-2019, Student was in first grade, in the same cluster classroom he attended in Kindergarten.¹⁵⁰ Beginning on September 12, 2019, Student began taking Guanfacine, 1 mg in the morning and 1 mg at night to assist with ADHD symptoms.¹⁵¹ Student has few, if any, friends at school. Student is moved to the rear of the classroom working with the paraprofessionals, and he does not interact with the rest of the class.¹⁵²

20. IEP revision. An IEP meeting was held on February 26, 2019 to revise the IEP dated May 2, 2018. The section of the IEP being revised was the Paraprofessional Support (modified on 2/25/2019) and Student Independence Plan.¹⁵³ Case Manager ("M/R") was present in a dual position of case manager and district representative. K-1 teacher was present as the special education teacher and evaluation representative, and Mother was present. At this meeting K-1 teacher discussed her submission to the

¹⁴⁵ Parent Exhibit 10 (101) and Parent Exhibit 8.

¹⁴⁶Parent Exhibit 10 (105) Parent Exhibit 8.

¹⁴⁷ Mother testimony and Parent Exhibit 7.

¹⁴⁸ Mother testimony and K-1 teacher testimony.

¹⁵⁰ Mother and K-1 teacher

¹⁵¹ SD-055. Mother and Dr. [REDACTED] testimony. Mother felt the drug was not helping control Student's ADHD.

¹⁵² Mother testimony.

¹⁵³ Parent Exhibit 23 and specifically P292.

District, on February 25, 2019, of a Paraprofessional Justification Form,¹⁵⁴ and the collected data which shows: “on average, Student is out of his seat/area 43 times per day, spits/burps 182 times per day and requires 117 prompts per day to complete tasks”.¹⁵⁵ Parent was unaware of the frequency of these incidents and did not recall this information being shared at the IEP meeting.¹⁵⁶ This document is not a part of the IEP.¹⁵⁷ During this IEP meeting Student’s paraprofessional support was revised to: “dedicated paraprofessional support was added for all core subjects, behavior, exploratory and P.E.”¹⁵⁸. The Student Independence Plan provides: “Shared paraprofessional support was changed to dedicated support.”¹⁵⁹

21. 2019 IEP meeting. On April 29, 2019 Student’s 2019 IEP meeting took place.¹⁶⁰ The K-1 teacher participated as the Case Manager, District Representative,¹⁶¹ Special Education Teacher, and Evaluation Representative.¹⁶² Student’s general education teacher (“HW”), Occupational Therapist (“O/T”), Social Worker (“S/W”), Speech/Language Pathologist (“SLP-1”), and Mother were present.¹⁶³ The IEP specifies “ELA: [Student] continued to display inconsistencies in basic skills such as: identifying letters, producing letter sounds, reading sight words. [Student’s] handwriting is illegible, and he does not consistently identify his name within the classroom setting. Math: [Student] continued to display inconsistencies in basic skills such as : rote counting by 1s, counting objects/pictures with one to one correspondence and identifying numerals.”

a. Parent’s concerns indicates the Mother would like Student to learn more letters and numbers, and states: “[Mother] is happy [Student] is progressing even if it isn’t in all areas.”¹⁶⁴

b. The IEP provides that Student was assessed on multiple occasions to identify his ability to identify uppercase and lowercase letters, both expressively and receptively, using Orton-Gillingham (which assessment is not identified). The result of those assessments show: 4-2-19: Expressive 2/26, Receptive 16/26. 4-9-19: Receptive 20/26. Student was also assessed on multiple occasions on his abilities to receptively identify letter sounds out of a field of 2 letter sounds: 4-2-

¹⁵⁴ Parent Exhibit 22.

¹⁵⁵ Parent Exhibit 23 (291)

¹⁵⁶ Mother testimony.

¹⁵⁷ Parent Exhibit 23.

¹⁵⁸ Parent Exhibit 23 (342)

¹⁵⁹ Parent Exhibit 23 (342).

¹⁶⁰ Parent Exhibit 25.

¹⁶¹ K-1 Teacher testimony. Parent Exhibit 25, Page 349. K-1 Teacher was required to sign as District Rep to finalize the IEP in the District’s system.

¹⁶² K-1 Teacher testimony. Parent Exhibit 25, Page 349. K-1 Teacher testified “Someone needed to be the evaluation representative so I signed in.”

¹⁶³ Parent Exhibit 25 (349).

¹⁶⁴ Parent Exhibit 23 (354).

2019: 12/26 and 4-23-2019 14/26. And on sight words: Preprimer 0/41; Primer: 0/52; First Grade: 0.¹⁶⁵

c. The language specification portion of the IEP lists the results of the February 27, 2018 Access Assessment. The results state that [Student] was assessed in components of Listening, Speaking, Reading, and Writing. He scored a proficiency Level 1 in each component for an Overall Composite Score of Proficiency Level 1¹⁶⁶. The bi-lingual specialist was not present.¹⁶⁷ These levels are unexplained.¹⁶⁸

d. The IEP notes Student is successful when given visuals and choices and when the CORE board is used. Student will often answer questions in Spanish and needs prompting to answer in English.¹⁶⁹ Student is unable to complete academic or functional tasks even with dedicated paraprofessional support.¹⁷⁰ Language Considerations provide: “Spanish is spoken at home, [Student] receives instruction in English at school. [Student] will say words or phrases in Spanish at school.”¹⁷¹

e. The IEP provides a Speech Language Goal.¹⁷² This goal has no present level of performance and it is not clear what the baseline is for this goal. SLP-2, who was required to implement this goal from November 2019 forward found this goal not measurable.¹⁷³

f. The IEP provides one Occupational Therapy Goal, Student will complete a 5 word sentence from a model adhering to appropriate letter formation, sizing, spacing and line adherence.¹⁷⁴ The new goal was written because Student had attained the previous goal one time.¹⁷⁵

22. Second Grade. For School year 2019-2020 Student was in the same PPGS cluster program and assigned to the second grade classroom.¹⁷⁶

23. While at PPGS, Student did participate in physical education class, once per week, with the general education students. The Phys-Ed Teacher credibly testified that Student never spoke him, and only reacted to what he was saying. Student came with a para-professional but never brought any other communication tools. Student did

¹⁶⁵ Parent Exhibit 23 (353)

¹⁶⁶ Stipulation of Fact 10.

¹⁶⁷ P-292.

¹⁶⁸ Parent Exhibit 15.

¹⁶⁹ Parent Exhibit 23 (354)

¹⁷⁰ Parent Exhibit 23 (355)

¹⁷¹ Parent Exhibit 23 (356)

¹⁷² Parent Exhibit 23 (369)

¹⁷³ SLP-2 testimony..

¹⁷⁴ Parent Exhibit 25.

¹⁷⁵ O/T testimony.

¹⁷⁶ 2nd Grade Teacher and Case Manager testimony.

interact with the general education students who migrated toward Student because they perceived Student as needing help.¹⁷⁷

24. On February 5, 2020, an assessment plan was drafted for Student's triennial evaluations.¹⁷⁸ Mother expressed concern about Student's regression, his inability to count from 1-5 and failure to recognize letters.¹⁷⁹ The 2nd Grade teacher confirmed Mother's concerns.¹⁸⁰ The identified needed assessments were: Social/emotional, general intelligence; academic performance, communication status and motor abilities. Screenings for health, vision, and hearing were determined to be not relevant.¹⁸¹ The District has no information about Student in these domains.¹⁸² There was no bilingual specialist at this meeting, and there was no discussion of testing in Spanish or for Student's English learner needs. Parent gave consent for the reevaluation on February 6, 2020¹⁸³

25. Social Work Re-evaluation. On March 16, 18, and 19, 2020, Students' Social Work re-evaluation was completed by S/W. The evaluation was conducted in English. The evaluation consisted of a records review, email interview with Student's teacher, interview with Mother, and Student observation. No formal assessments were completed.¹⁸⁴ The Mother expressed her concerns to S/W: "Mother is very concerned with [Student's] very slow academic progress. It also seems to [Mother] that [Student] had more language when he was five years old then he has now."¹⁸⁵ Student's teacher expressed her concerns: "[Student] requires a high level of prompting to complete functional/self-care tasks, transition within the room, attend to work & complete all other tasks. [Student's] attention is fleeting during both academic & social tasks, and, during most activities, he shows no motivation. Even during games, [Student] looks away or attempts to leave the group."¹⁸⁶ Student's teacher also noted that when Student is experiencing high anxiety he "cries loudly, refuses to work or sit down & require several breaks a day to complete work."¹⁸⁷ Student appears to be pushing boundaries by sitting on a table for attention and swinging his wallet to hit other students. Additionally during these periods, Student urinates on himself several times per day and has bitten his aide.¹⁸⁸ S/W concludes "Because the immature social skills and periodic bouts of anxiety negatively impact [Student's] school functioning, continuation of social emotional support is recommended."¹⁸⁹ S/W made numerous

¹⁷⁷ Phys-Ed teacher testimony.

¹⁷⁸ Case Manager Testimony and Parent Exhibit 29.

¹⁷⁹ Mother testimony.

¹⁸⁰ 2nd Grade teacher testimony.

¹⁸¹ Parent Exhibit 29 (407)

¹⁸² Parent Exhibit 29 (407)

¹⁸³ Stipulation of Fact.

¹⁸⁴ S/W testimony and SD Exhibit 6.

¹⁸⁵ SD-058.

¹⁸⁶ SD-055.

¹⁸⁷ SD-055.

¹⁸⁸ SD-055.

¹⁸⁹ SD-058

recommendations including recommendations regarding social interactions and social skills.¹⁹⁰ There was one social/emotional goal in Student's April 15, 2020 IEP, that goal focuses on functional communications training, using verbal language or exchange a picture card to express wants/needs instead of using maladaptive behaviors (screaming, wetting himself, and leaving assigned areas without permission).¹⁹¹ This evaluation was provided to the Parents, by email, on April 13, 2020 at 12:00 p.m.¹⁹²

26. Pandemic. On March 20, 2020, the Illinois Governor issued a "stay at home" order effective March 21, 2020 which closed schools.¹⁹³ Act of God days are not considered a school day and do not count toward the 60 school days time period to complete an evaluation.¹⁹⁴ There were 31 school days between February 6 and March 21, 2020. On April 13, 2020 █████ reopened schools using remote learning.¹⁹⁵ █████ school year ended on June 16, 2020.¹⁹⁶ There are 45 school days between April 13 and June 16, 2020.¹⁹⁷ The Student's evaluation was due on June 8, 2020. The District has a summer team for evaluations.¹⁹⁸ As of the start of this hearing, September 10, 2020, the re-evaluations had not been completed by the District.¹⁹⁹

27. April 2020 IEP. On April 15, 2020, the District held an IEP meeting for Student. A draft of Student's IEP was provided to the Parents on April 13, 2020 by email.²⁰⁰ The IEP notification specified, he stated purpose of that meeting was "re-evaluation", and included the location as "virtual meeting-Phone."²⁰¹ The Mother participated by telephone.²⁰² The District participants were using a video conferencing platform.²⁰³

a. Student's strengths include: "[Student] can independently write "jo" to write [Student's] name. [Student] can count by rote to 5. [Student] orients a book the correct way and turns pages looking fleetingly at pictures in the book." Further, "[Student] can cut in a straight line. [Student] can trace letters and numbers with some accuracy."²⁰⁴

¹⁹⁰ S/W testimony and SD-057.

¹⁹¹ S/W testimony and Parent Exhibit 32 (453)

¹⁹² Case Manager testimony and Parent Exhibit 44.

¹⁹³ IHO exhibit 14(a)

¹⁹⁴ D/R testimony.

¹⁹⁵ Special Education Guidance to Remote Learning procedures. P-1170.

¹⁹⁶ Parent Exhibit 77 (1037).

¹⁹⁷ Parent Exhibit 77 (1037).

¹⁹⁸ S-Counselor testimony.

¹⁹⁹ S-Counselor testimony.

²⁰⁰ Case Manager Testimony and Exhibit 44.

²⁰¹ Parent Exhibit 31, Parent Exhibit 32 (427).

²⁰² Mother testimony.

²⁰³ Mother testimony and P-570.

²⁰⁴ Parent Exhibit 32 (429).

b. Student's primary language is specified as Spanish, the last English language proficiency testing was February 27, 2018,²⁰⁵ and the bi-lingual specialist did not attend the IEP meeting.²⁰⁶ Student's proficiency level remained at 1.²⁰⁷ This IEP states: "[Student] speaks Spanish at home. [Student] often speaks Spanish in the classroom. [Student] responds better to verbal directions given in Spanish as well. Dual instruction using Spanish to clarify concepts is helpful to support [Student's] understanding."²⁰⁸

c. The IEP team found these special considerations for students on the autism spectrum relevant: 1) Student is difficult to understand and switches between Spanish/English, and needs improved communication training using picture exchange; 2) Student does not engage with peers, wants attention from peers, but lacks the skills to request it;²⁰⁹ 3) Student will attend to instruction only when offered highly-preferred reinforcers, which change frequently;²¹⁰ 4) Student demonstrates significant learned helplessness, Student requests or waits for things to be done which he previously did independently.²¹¹ Student prefers talking to adults (especially those that speak Spanish.²¹²

d. The Independence Paraprofessional plan states the paraprofessionals will work to eliminate all verbal prompts and encourage Student to complete all tasks he is capable of on his own.²¹³ There is no corresponding goal to implement this plan or track success.

e. The S/W was present and gave her report prior to being excused. The social work re-evaluation was not discussed because no other evaluations had taken place.²¹⁴ Student was provided 15 minutes per quarter ("mpq") collaborative/consult minutes with special ed teacher to address strategies to promote development of Student's social skills.²¹⁵

f. There is conflicting information regarding Student's occupational performance. "[Student] requires verbal cues to utilize a functional tripod grasp on writing utensils, [Student] needs hand over hand assistance in order execute appropriate grasp and letter formation. [Student] requires moderate verbal cueing typically to display appropriate letter formation, sizing, and spacing as well when coping

²⁰⁵Parent Exhibit 32 (428).

²⁰⁶ Stipulation.

²⁰⁷Parent Exhibit 32 (428).

²⁰⁸ Parent Exhibit 32 (431).

²⁰⁹ Parent Exhibit 32 (430).

²¹⁰ Parent Exhibit 32 (431).

²¹¹ Parent Exhibit 32 (431). and P-464.

²¹² Parent Exhibit 32 (431).

²¹³ Parent Exhibit 32 (464).

²¹⁴ Mother and Case Manager testimony.

²¹⁵ Parent Exhibit 32 (438).

simple words.’²¹⁶ Previously Student had a goal to address handwriting, there is no evidence this goal was achieved. Student was provided one fine-motor/visual motor goal.²¹⁷ The O/T admitted this was not a fine motor goal but a task completion goal.²¹⁸

g. The IEP provided Student with 30 minutes per week (“mpw”) of direct occupational therapy and speech/language therapy. It also provided 15 minutes quarterly of consultative services in social/emotional, occupational therapy/independent functioning, and speech/language.²¹⁹ Student was to receive ESY.

h. Student was recommended to continue within the smaller, highly structured, educational setting (cluster).²²⁰ For the IEP team to consider a more restrictive, then the cluster placement, a District Representative is necessary.²²¹ No District Representative was present and the Case Manager was acting as District Representative.²²² Case Manger had previously been a District Representative and was aware of this requirement.²²³

28. Private Evaluation. In May 2020, Parents obtained a private evaluation of Student from Dr. [REDACTED].²²⁴ Dr. [REDACTED] received a PhD in Clinical Psychology from Loyola University in 2001.²²⁵ Dr. [REDACTED] provides evaluations and re-evaluations for children referred by school districts and privately. Dr. [REDACTED] only does evaluations.²²⁶

Dr. [REDACTED] interviewed Student at four different sessions lasting about two hours each. A translator was present and Student was tested in Spanish. In Dr. [REDACTED] opinion an English evaluation would be inappropriate.²²⁷ During the interview video of Student was taken.²²⁸

In preparation for testing, Dr. [REDACTED] reviewed Student’s 2017 private TMC evaluation,²²⁹ ABA reports, and Parent’s video. Video was reviewed to establish a baseline for Parents’ allegation Student was regressing. Dr. [REDACTED] was prepared to test a Spanish speaking student, who was able to answer in full sentences, was hyperactive, established eye contact, and was able to be tested despite needing motor breaks. Dr. [REDACTED] plan was to use some of the tests completed during the original

²¹⁶ Parent Exhibit 32 (42).

²¹⁷ Parent Exhibit 32 (457)..

²¹⁸ O/T testimony.

²¹⁹ Parent Exhibit 32 (459).

²²⁰ Parent Exhibit 32 (466).

²²¹ D/R testimony and P-845.

²²² Case Manager testimony and P-427.

²²³ Case Manager testimony.

²²⁴ Mother testimony and Parent Exhibit 10.

²²⁵ Parent Exhibit 109.

²²⁶ Dr. [REDACTED] testimony.

²²⁷ Dr. [REDACTED] testimony.

²²⁸ Mother testimony and Parent Exhibit 85.

²²⁹ Dr. [REDACTED] did not recall when she reviewed the second Thomson evaluation.

TMC evaluation to compare with Student's current testing.²³⁰ During the 2017 TMC assessments, there were tests in which Student tested solidly in the average range, this means Student displayed adequate cognitive development.

Dr. [REDACTED] was unable to administer the Wechsler Preschool and Primary Scale of Intelligence ("WPPSI") because Student was unable to engage and follow directives, Student was oriented to person, did have adequate eye contact but would look through or past the examiner.²³¹ Student was not responsive to incentives children would normally respond to, Student was detached and almost unreachable.²³² Dr. [REDACTED] was able to successfully or partially administer several tests:

The CTONI-2, a nonverbal measure of intelligence was attempted, one subtest was administered successfully (Picture Categorization). Student demonstrated low average ability to categorize pictured items in a nonverbal format (age equivalent <6.0), Student was unable to complete the remaining subtests due to lack of engagement.²³³

After being unable to complete the CTONI-2, the Primary Test of nonverbal Intelligence (PTONI) was administered to assess Student's overall cognitive functioning as demands for visual attention are decreased in comparison to the CTONI-2. Student exhibited a similar inability to complete this assessment. Student's performance was inconsistent, and he exhibited overall impaired intellectual functioning (FSIQ=57; 1st percentile; 5.4 year age equivalent). This testing was found to represent a significant decline from Student's previous 2016 evaluation.²³⁴

Visual-Motor and Visual Perceptual Skills were tested. Student exhibited a weak, immature pencil grasp (and required hand over hand assistance) and was unable to hold the pencil adequately and often dropped it due to low muscle tone.²³⁵

On the PPVT-4 Student demonstrated impaired receptive vocabulary. He demonstrated receptive vocabulary at a 4.9 age equivalent (SS=66; 2nd percentile). Student was able to correctly identify some nouns, but was unable to demonstrate understanding of verbs or actions. This was found to be a significant decline from his previous position.²³⁶

Student's receptive understanding of academic concepts was assessed with the Bracken Basic Concepts Scale-3rd Edition, Receptive (BBCS-3:R). Student's performance on this measure represents a decline from his performance as described in progress notes and assessments. Student performed in the impaired range on the school readiness composite, obtaining a score corresponding to a <3.0 year old age

²³⁰ Dr. [REDACTED] testimony.

²³¹ Dr. [REDACTED] testimony and Parent Exhibit 85, video 2145.

²³² Dr. [REDACTED] testimony.

²³³ Parent Exhibit 10 (107).

²³⁴ Parent Exhibit 10 (107).

²³⁵ Dr. [REDACTED] testimony and Parent Exhibit 10 (108).

²³⁶ Parent Exhibit 10 (108).

equivalence. Student correctly identified 6 out of 15 letters, 1 or of 18 numbers, and 2 out of 22 size/comparison items (big and small). Student was unable to identify any shapes.²³⁷

Additional testing was attempted but Student was unable to continue or complete the testing provided limited results.²³⁸ There was an attempt to test for Autism using the ADOS. It was very difficult to elicit a reaction, Student showed little to no interest in toys or attempts to engage him. Student exhibited detachment and lack of engagement and was unreachable.²³⁹

Following her completion of Student's evaluation, Dr. [REDACTED] reviewed District eligibility and IEPs. Dr. [REDACTED] determined there was nothing in Student's IEP addressing Student's regression.²⁴⁰ Student did not master the majority of his goals across all of the IEPs, and documentation does not detail Student's progress or lack of progress.²⁴¹ Rather than addressing Student's lack of progress, the District simplified Student's goals. This simplification suggests some identification of Student's regression, but no specific concerns were raised in other areas of the IEPs, and the regression was not addressed. Dr. [REDACTED] found it remarkable that Student's lost pencil grasp and lost ability to identify letters and sounds were not raised and addressed by the District. Additionally, Dr. [REDACTED] found Student's services have decreased him the 2020 IEP. Student's BIP was removed, the goals and minutes (individual and classroom) have been reduced 20% from the supports in first and second grade, and Student went from having 11 goals to 7.²⁴²

Dr. [REDACTED] found the District used the abbreviated version of the ACCESS testing. This testing inadequate and determined that Student needs to be evaluated using the full ACCESS testing version of the WIDA and the results appropriately implemented.²⁴³

29. Dr. [REDACTED] determined Student exhibits regression in behavior,²⁴⁴ and play.²⁴⁵ Dr. [REDACTED] concluded Student's ability to engage, follow verbal instructions, and complete requests has declined.

30. Tracking Student across years. Dr. [REDACTED] determined Student's progress does not appear to have been tracked consistently across domains, finding the following areas were of significant concern: Student has regressed considerably based on review of the documents.

Language:

²³⁷ Parent Exhibit 10 (109).

²³⁸ Parent Exhibit 10 (108). 110,111.

²³⁹ Dr. [REDACTED] testimony.

²⁴⁰ Dr. [REDACTED] testimony.

²⁴¹ Parent Exhibit 10 (118).

²⁴² Parent Exhibit 10 (118).

²⁴³ Parent Exhibit 10 (117).

²⁴⁴ Parent Exhibit 10 (125).

²⁴⁵ Parent Exhibit 10 (126).

Age 4 (2016) Student's neurological evaluation found expressive vocabulary is within the average range, Student generated words belonging to a category within the average range; and Student receptively identified pictures within the borderline impaired range.²⁴⁶

Age 5 (2017), Per IEP: Student joins in rhyming songs and games, produces age appropriate speech sounds, states his name, states his age when given choices, hears and shows awareness of separate words in sentences, follow simple directions related to position. ²⁴⁷

Age 6: (2018), Per Neurological evaluation Students receptive language was less than expected (required numerous repetitions); reduced spontaneous speech; single word production and humming sounds characterize expressive language; labels one object, unable to coordinate eye gaze with verbal requests and gestures. Per Speech/Language evaluation, Student can answer "who/what/where/ questions with 80% accuracy, increased ability to produce basic pronouns, expressively spoke in expanded sentences to request and immediate want/need.²⁴⁸

Age 8: (2020), Per IEP: Student needs instruction to answer basic comprehension questions, needs instruction to rote count 1:1; communicates using 1-3 word utterances, most successful when given 2 choices.²⁴⁹

District IEPs established Student was speaking in full sentences and using "wh" language.²⁵⁰ Dr. [REDACTED] video²⁵¹ established Student does not respond when asked how old are you? Student made utterances, in what could be Spanish, where Student was mumbling and babbling nonsensically. Dr. [REDACTED] found this significant because it was unusual to see babbling one language is acquired. Dr. [REDACTED] credibly testified that Student is so removed from a language speaking world and self directed that he needs to be returned to a place where language matters. Potentially, a bi-lingual paraprofessional could be sufficient, however, without an understanding of Student's language needs, it would be difficult for the paraprofessional to support Student in a meaningful manner.²⁵²

Academics:

Age 5 (2017), Per IEP: Student reads his own name, selects 1 letter from an array of 5, labels on of 4 numbers; recognizes and names a few letters in his own name, identifies a few sounds in letters, pretends to read a familiar book, turning pages and naming pictures as cues, retelling some events from a familiar story, recites rhymes, verbally count, understands concepts of 1,2,and more; identifies numerals to 5

²⁴⁶ Parent Exhibit 10 (123).

²⁴⁷ Parent Exhibit 10 (123).

²⁴⁸ Parent Exhibit 10 (124).

²⁴⁹ Parent Exhibit 10 (124).

²⁵⁰ Dr. [REDACTED] testimony and Parent-14.

²⁵¹ Parent Exhibit 85.

²⁵² Dr. [REDACTED] testimony.

by name and connects each to counted objects; and makes simple comparisons between 2 objects.²⁵³

Age 6 (2018), Per occupational therapy report, Student inconsistently identifies letters (no specific information given).

Age 8 (2020), Per IEP: rote counts to 5, matches letters, numbers, colors, shapes, emotions, community workers, and animals, clearly communicates needs with 1-3 word utterances; writes name as Jo; needs help to identify letter, names, and sounds.²⁵⁴

Motor;

Age 4 (2016), scribes the alphabet except the letter 's';

Age 5 (2017), puts together K'nex, Mr. Potato head, toy food, and completes 5 plus puzzles that required him to match letters to the corresponding placement in the puzzle insert.

Age 6 (2018) Gait is normal and independent, no gross motor impairment., Concerns regarding Student's muscle tone revealed at this time.

Age 8 (2020) Per IEP: Needs hand over hand assistance to execute appropriate grasp and letter formation.

29. Dr. [REDACTED] recommended:

a. Evaluations: Speech evaluation.²⁵⁵ Motor Evaluation: Comprehensive occupational therapy and physical therapy evaluations should be completed due to loss of skills.²⁵⁶ Auditory evaluation to determine whether hearing difficulties are contributing to Student's challenges.²⁵⁷ AACD and an AT evaluation, the results should include a plan for systematic, consistent instruction to teach Student to communicate using any device. Additional testing should be done in Spanish.²⁵⁸

b. Student participate in the Alternate Access Test, which should be repeated each year, to determine Student's ability to access bi-lingual education.

c. ABA therapy to be able to respond, and research based interventions specifically developed for children with autism. Dr. [REDACTED] found an e-learning program is inappropriate, Student does not have the foundational learner characteristics (visual attention and ability to respond to verbal commands) to work

²⁵³ Parent Exhibit 10 (126,127).

²⁵⁴ Parent Exhibit 10 (127).

²⁵⁵ Parent Exhibit 10 (118).

²⁵⁶ Parent Exhibit 10 (118).

²⁵⁷ Parent Exhibit 10 (119). 9

²⁵⁸ Dr. [REDACTED] Testimony.

within an e-learning platform, ABA can assist with these issues.²⁵⁹ Dr. [REDACTED] recommended 25 hours per week of ABA therapy morning and evening in the home.²⁶⁰

30. Dr. [REDACTED] recommended: Four receptive language goals, two expressive language goals; two social/pragmatic language goals, three learning behavior goals, and three academic goals. She noted goals should be modified to reflect results from Student's evaluations. She also recommended Student be introduced to the Nonverbal Reading approach systematic instructional program.²⁶¹

31. The Cost of Dr. [REDACTED] evaluation was \$4600.00.²⁶²

32. REMOTE LEARNING: [REDACTED] Special Education Guidance to Remote Learning Procedures, states: "All students must be afforded a free appropriate public education, but during remote learning, schools may not be able to provide services in the same manner they are typically provided. Due to the limitations of remote learning, students' IEPs and 504s cannot be fully implemented at this time as the bell-to bell minutes of the full school day are not available."²⁶³ The document goes on: "The proposed learning plan should be completed as soon as possible to provide services that are comparable to a student's current IEP. The context of the learning task should be reviewed and it should be determined if the child requires the same accommodations during remote learning as are listed in the IEP or if new accommodations are needed to help the child complete the task(s). Special Education providers should make appropriate modifications and accommodations to the student's curriculum to alleviate any unreasonable burden upon the parent/guardian. Prior to the development of an individual remote learning plan school teams should continue to provide services to students according to the student's existing IEP."²⁶⁴

33. Remote Classroom. Remote learning consisted of the 2nd Grade Teacher connecting with Student and his classmates, nine students total, on Google Hangouts™ for about 15 minutes each day.²⁶⁵ The O/T also met with Student individually two additional times for 15 minutes each meeting. Student's April 29, 2019 IEP specifies: "In computer, [Student] is unable to navigate the mouse or explore the computer. [Student] does not have any preferred websites, games, songs, etc."²⁶⁶ The District provided remote education for Student. The Mother notified the 2nd Grade Teacher that Student's attention span, when using electronics, was only about three minutes and Student was not paying attention to the computer or the tablet. Mother requested assistance. The 2nd Grade Teacher offered to print the classwork and help Mother to get the homework done in written form, when using paper Student can maintain an attention span of 5-6

²⁵⁹ Dr. [REDACTED] Testimony.

²⁶⁰ Dr. [REDACTED] Testimony.

²⁶¹ Parent Exhibit 10 (120).

²⁶² Dr. [REDACTED] Testimony and Parent Exhibit 84.

²⁶³ Parent Exhibit 91 (1170).

²⁶⁴ Parent Exhibit 91 (1170).

²⁶⁵ Testimony of Mother and 2nd Grade Teacher.

²⁶⁶ Parent Exhibit 25 (355).

minutes. No other assistance was provided to Mother or Student. Mother sent 2nd Grade Teacher photos of the completed homework for grading.

On Thursdays the SLP-2²⁶⁷ would conduct the class.²⁶⁸ Only Student and one other classmate received speech/language services.²⁶⁹ Student's services were direct and not group services.²⁷⁰ Student was not able to attend the class, so SLP-2 arranged to meet with Student weekly.²⁷¹

34. Between April 13, 2020 and June 18, 2020, the O/T provided Student with four synchronous learning session via video conferencing. O/T also provided Parents with activities and Parents would report back on how Student did on the activity, this is how the O/T determined progress.²⁷² The O/T would come in at the end of class for an additional 15 minutes. ²⁷³

35. On May 8, 2020 Parents were sent a Notification of Conference, scheduling a conference for June 10, 2020 to discuss the educational needs of Student and to develop a remote learning plan.²⁷⁴ Parents were invited to participate by telephone, while the District participants were present on Google Hangout™. Mother, and her Attorney, were the only ones participating by telephone²⁷⁵, and Mother felt unimportant.²⁷⁶ At the time of this meeting, the remote learning plan was considered a stand-alone document, so it was not a revision to Student's IEP.²⁷⁷ The District participants offered to re-schedule the meeting so the Parents and their Attorney could also participate by video conference, however, Mother did not have access to a computer, and Mother and her Attorney did not wish to move forward by telephone conference line.²⁷⁸ Mother's Attorney requested the meeting be rescheduled. ²⁷⁹ The meeting was rescheduled for June 16, 2020, ²⁸⁰ however the District wanted legal representation present and no legal representation could attend. The District cancelled the meeting.²⁸¹ The new school year for 2020-2021 began remotely on September 8, 2020. The meeting to discuss Student's remote learning plan, was not held as of the date of Mother's testimony,

²⁶⁷ SLP-2 is a non-teaching speech language pathologist and is not authorized to provide instruction.

²⁶⁸ Mother testimony. SLP-2 stated the day was Wednesday.

²⁶⁹ SLP-2 testimony.

²⁷⁰ SLP-2 testimony.

²⁷¹ SLP-2 testimony.

²⁷² O/T testimony.

²⁷³ Mother testimony

²⁷⁴ Parent exhibit 34 and Mother testimony.

²⁷⁵ Mother testimony and D/R testimony.

²⁷⁶ Mother testimony.

²⁷⁷ M/R testimony.

²⁷⁸ M/R testimony.

²⁷⁹ M/R testimony.

²⁸⁰ Parent exhibit 34, Page 469 (although dated 5/8/2020, it appears this document was generated after the June 10, 2020 meeting.

²⁸¹ Parent Exhibit 53 (658).

September 10, 2020.²⁸² Student's IEP was operative during the entire time of remote learning and should have been fully implemented.²⁸³

36. On July 24, 2020, the Parents' Attorney emailed the District's Attorney a copy of Dr. [REDACTED] May 2020 Comprehensive Developmental Neuropsychological Evaluation Report.²⁸⁴

37. [REDACTED] of Naperville can implement Student's IEP,²⁸⁵ and is determined to be an appropriate private day school placement.

I. Whether the District failed to conduct evaluations of Student, from June 1, 2018 to the date of hearing, in a timely and complete manner in all areas of suspected disability, which were sufficiently comprehensive to identify all Student's special education and related service needs, thereby denying him a FAPE in the least restrictive environment.

An appropriate evaluation is one which complies with the pertinent Federal and state regulations. *Krista P. v. Manhattan School District*, 255 F.Supp.2d 873, 887 (N.D. Ill.2003). The IDEA requirements for evaluations are set forth at 34 C.F.R. §§300.304-311. An evaluation must assess a student in all areas of suspected disability, and be sufficiently comprehensive enough to identify all special education and related service needs of the student, whether or not linked to the disability category in which the child has been classified. 34 C.F.R. §§300.304(c). In performing the evaluation, a district must use a variety of assessment tools and strategies to gather "relevant functional, developmental, and academic information" about the student to assist the district in developing the student's IEP. 34 CFR 300.304(b)(1)(ii). The assessment tools must be "technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C. §1414(b)(2)(C). The evaluation must be administered so as not to be discriminatory on a racial or cultural basis and in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and

²⁸² Mother testimony.

²⁸³ M/R testimony.

²⁸⁴ Mother testimony, Parent Exhibit 10 and Parent Exhibit 55.

²⁸⁵ VP-LF Testimony.

functionally, by trained and knowledgeable personnel' and in accordance with any instructions provided by the producer of such assessments. 34 C.F.R. §300.304(c). An English Learner student who is suspected of having a disability, should be evaluated in his/her home/native language, in a way that is not discriminatory with respect to student's culture. 23 Ill. Admin code Section 226.150. The Illinois School Code identifies a "qualified professional" is an individual who holds credentials to evaluate a child in a domain or domains for which an evaluation is being sought. 105 ILCS 5/14-8.02(g-5).

Following a student's initial evaluation, the District has an ongoing obligation to continue to monitor the Student to ensure the appropriateness of Student's IEP, and must report progress on those goals at least quarterly to the Parents. The Court in *Allendale County (SC) Public Schools*, 76 IDELR 263 (Office of Civil Rights, Southern Division, D.C. (South Carolina, March 27, 2020), found that when there is information suggesting the student's educational program is not meeting the student's individual needs, such as a significant decline in student's grades or behavior, a group of knowledgeable persons should consider whether further evaluation or revisions to the student's Section 504 Plan or placement is necessary. Although Student does not have a 504, the analysis in Allendale can be related to Student's IEP, especially in light of the finding in *ZJ v. Board of Education of the City of Chicago, Dist. 229*, 344 F. Supp. 3d 988 (N.D. Ill 2018), where the Court determined one low score doesn't trigger a requirement to evaluate, but two low scores justify the need for an evaluation.

From the start of Student's education in the District, District teachers expressed concerns regarding Student's social and cognitive development to the Parents.²⁸⁶ Although the District had a child find obligation under the law, the District did not refer Student for an evaluation. Fortunately for Student, the Parents had the resources to obtain a private evaluation

²⁸⁶ FOF-1 and 2.

which was used as the basis to force the District's initial evaluations and Student's first (2017) IEP.²⁸⁷

During the 2017 evaluations and IEP meeting, the District knew it did not have sufficient information to determine whether Student had hearing or vision issues; the District knew it was unable to determine if Student had a language issue or whether there was a language barrier which prevented Student from accessing education; the District knew Student had struggles with transitions and poor safety awareness. It also knew these issues were not addressed in the IEP.²⁸⁸ In 2018, the District documented Mothers concerns that Student lacked basic academic skills, and acknowledged that Student made limited progress in terms of academics.²⁸⁹ Student's deteriorating skills and regression were also apparent to District staff.²⁹⁰ However, the District only elected to address Student's behavior with an FBA and BIP that the District had no consent to perform.²⁹¹ No additional evaluations were considered.

What is also apparent is that the IEP team did not make the effort or take the time to explain to the Parents the evaluation and educational process and their role in the IEP process. The number of additional services and evaluations obtained by the Parents (2018 Neuropsychological re-evaluation, ABA therapy, occupational, and speech/language) clearly indicates the Parents' concern regarding Student's progress or lack thereof. The K-1 teacher was aware of Student's ABA and knew in June 2018, the Parents could no longer provide this private therapy.²⁹² Parents did not share these additional evaluations with the District;²⁹³ potentially the private evaluations would have been helpful in revising Student's IEPs.

²⁸⁷ FOF-3.

²⁸⁸ FOF-6.

²⁸⁹ FOF-16

²⁹⁰ FOF-16a.

²⁹¹ FOF-16h.

²⁹² FOF-18.

²⁹³ FOF-17.

Due to Student's deteriorating behaviors in February 2019, the District revised Student's IEP.²⁹⁴ Although K-1 teacher was aware Student was no longer receiving ABA therapy, The K-1 teacher never made the possible connection between lack of ABA and escalating behavior from Student.²⁹⁵ The District did not request any additional assessments to determine the effect the behavior was having on Student's ability to access his academics.

At the April 2019 IEP meeting the signs of regression were clear. Student no longer displayed skills documented in the 2017 evaluations. Student now has difficulty identifying sounds out of a field of two and cannot identify any sight words.²⁹⁶

The District did not consider, much less assess, the impact Student's limited English proficiency might be having on Student's behavior, and availability for education. The District used the Alternate Access for Ells to assess Student's English Language proficiency. This test is for ELL Students with significant cognitive disabilities, there is no evidence Student has a cognitive disability.²⁹⁷ Dr. [REDACTED] found this testing inadequate and determined that Student needs to be evaluated using the full ACCESS testing version of the WIDA and the results appropriately implemented.²⁹⁸

The District staff knew Student's responses were either non-existent, babbling, Spanish, or inappropriate in many cases, they also knew auditory testing was inconclusive.²⁹⁹ No additional auditory testing was requested. It is unknown what Student hears and whether Student has the ability to process this information. There is clear evidence of the use of picture

²⁹⁴ FOF-20.

²⁹⁵ Id.

²⁹⁶ FOF-21.

²⁹⁷ Parent Exhibit 15.

²⁹⁸ P-117.

²⁹⁹ FOF-6.

cards being helpful,³⁰⁰ and yet no one requested an assistive technology assessment or AAC assessment.

The Parent's expert Dr. [REDACTED] credible testimony was that she discovered the District had actually reduced Student's services, including the removal of Student's BIP.³⁰¹

Between the initial evaluation and the 2019 IEP meeting, the District had seen and documented a decline in Student's physical dexterity, behavior, and academics. Goals were not mastered and were left the same or simplified. Dr. [REDACTED] opined that she found it "remarkable" that Student's lost pencil grasp and lost ability to identify letters and sounds were not raised and addressed by the District.³⁰²

This IHO finds that Parents have met their burden on this issue.

II. Whether the District's Individualized Education Programs ("IEP") dated May 2, 2018, February 26, 2019 April 29, 2019 April 15 2020 for Student were reasonably calculated to provide Student with a FAPE by providing Student with measurable and appropriately ambitious goals across all areas of deficit, research based instruction for students with autism, bilingual education, staff training and appropriate supports, services, programming, and placement.

The Individuals with Disabilities Education Act ("IDEA") "requires States receiving federal funds to make a free appropriate public education ("FAPE") available to all children with disabilities residing in the State. *Forest Grove School District v. T.A.*, 557 U.S. 317, 230, 129 S.Ct. 2484, 2492 174 L. Ed.2d. 168 (2009) In order for a school district to meet its FAPE obligation under the IDEA, it must "offer an independent educational plan reasonably calculated to enable a child to make progress appropriate in

³⁰⁰ FOF-21d.

³⁰¹ FOF-28.

³⁰² Id.

light of the child's circumstances.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). “The goals may differ, but every child should have the chance to meet challenging objectives.” *Id.*

The IEP is developed by an “IEP team” comprised of the disabled child’s parents, teachers from the child’s school, as well as special education teachers and providers. 20 U.S.C. §1414(d)(B). The IEP team is required to review the child’s “IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child had been achieved,” and revise the IEP if needed. 20 U.S.C. § 1414(4)(A)(i - ii). A district must ensure that each child with a disability within its jurisdiction has an IEP in effect for that child at the beginning of each school year. Section 1414(d)(2)(A).

The IDEA imposes both procedural and substantive obligations on the State to insure compliance with IDEA requirements. *Board of Education v. Rowley*, 458 U.S. 176, 207-208 (1982). *Andrew* expanded on *Rowley*, directly addressing the substantive requirement of IDEA. *Andrew F.*, 137 S. Ct. at 995. To comply with the IDEA’s procedural component, a school district must follow all the “guaranteed procedural safeguards” set forth in the Act. 20 U.S.C. §1415(a); *See Bd. of Educ. v. Ross*, 486 F.3d 267, 273-74 (7th Cir. 2007). One of the IDEA’s procedural requirements is that a school district must assess each disabled child identified by the district for their educational needs, develop an IEP according to that assessment, and review and revise the plan pursuant to the requirements of the Act. 20 U.S.C. §§ 401(14) & 1414(a-d); *Ross, Id.* “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ a particular child.” *Andrew F.*, 137 S. Ct. at 994 (quoting *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). The IEP must include a statement of the child’s present level of academic

achievement and functional performance, measurable annual academic and functional goals that will meet the child's needs and allow the child to make progress in the general educational curriculum, a description of how the child's progress toward meeting the annual goal will be measured, and a statement of the special education and related services that are to be provided to the child. 20 U.S.C. Secs. 1414(d)(1)(A)(i)(I),(II) &(IV), 34 CFR §300.320 (a)(2)(i)(A). Special education is specially designed instruction to meet a student's unique needs (34 CFR 300.39(a)(1)) and special education instruction must be based on peer-reviewed research, to the extent practicable. 20 U.S.C. § 1414(d)(1)(A)(i)(V). Finally, the IEP must identify any program modifications that will be provided to allow the student to advance appropriately toward meeting his or her annual goals, including making progress in the general education curriculum. 34 CFR 300.320(a)(4)(i) – (iii). A district must ensure that each child with a disability within its jurisdiction has an IEP in effect for that child at the beginning of each school year. Section 1414(d)(2)(A). Defects in an IEP that “result in the loss of educational opportunity” deny a child a FAPE. *Ross*, 486 F.3d at 276. A school district's failure to comply with the IDEA's procedural requirements does “not automatically require a finding of a denial of FAPE.” *Ross*, 486 F.3d at 276. “procedural violations can be held to deny a student a FAPE only if they (I) impeded the child's right to a free and appropriate public education; (II) significantly impeded Plaintiffs' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to Plaintiffs' child; or (III) caused a deprivation of educational benefits.” *James v. Bd. of Educ. of Aptakisic-Tripp Dist. 102*, 642 F.Supp.2d 804, 816 (N.D. Ill. July 22, 2009) (quoting 20 U.S.C. Sec. 1415(f)(3)(E)(ii)).

The evidence shows that the four IEPs the District developed for Student on May 2, 2018, February 26, 2019 April 29, 2019, and April 15 2020 consistently failed to provide Student, who suffers from the disability of autism and other health impairments, with appropriate curriculum, instruction and placement, measurable annual goals, and appropriate special education and related services designed to address his unique educational needs, and those procedural and substantive failures denied Student a FAPE.

First, the placement, curriculum and instruction provided to Student were inappropriate and failed to meet his educational needs. Throughout the period when the IEPs in question were in effect, the District placed Student in a cluster classroom,³⁰³ a placement which uses a significantly modified curriculum that focuses on life skills and is intended only for students with the most severe intellectual disabilities.³⁰⁴ A student must have a diagnosis of cognitive disability in order to be placed in a cluster classroom.³⁰⁵ Student, however, was never diagnosed with a cognitive or intellectual disability. His diagnosed disability is autism.³⁰⁶ Student's placement in a cluster classroom, then, was a placement meant to address a problem of a disability that, in this case, never existed. Student suffers from autism, his eligibility classification, and the instruction and interventions he received in his cluster classrooms were insufficient in light of his disability. Dr. [REDACTED] credibly testified that, in her opinion, based on Student's autism, Student requires research-based interventions specifically developed for children with autism, an intervention with a therapist certified in ABA, and therapy

³⁰³ FOF-11.d.

³⁰⁴ FOF-13.

³⁰⁵ Id.

³⁰⁶ FOF-10.

designed to increase Student's ability to engage and respond to his academic programs in school.³⁰⁷ Student's IEPs, however, provide for no ABA therapy for Student.³⁰⁸ Student's K-1 Teacher testified that her classroom provided no research-based instruction for student's with autism and no ABA Therapy.³⁰⁹ As noted above, Parents arranged in 2017 for Student to receive private ABA therapy until June 2018. Student's K-1 Teacher knew that ABA was discontinued. The District took no action to address the loss of Student's ABA Therapy, or assess how it would impact Student in the educational environment.

Second, particularly troubling is the District's failure to properly address Student's inability to communicate with others, whether in English and Spanish, an ability that would have significant impact on his ability to learn and progress in all social, educational and academic areas. The District knew early on that Student had trouble communicating, both in his ability to speak and in his comprehension of what others were saying.³¹⁰ In February 2017, before Student was found eligible for special education, the District speech/language pathologist conducted a speech-language assessment of Student to determine why Student was having trouble communicating with his teachers.³¹¹ SLP1 noted in her report that Student's primary language is Spanish, but Student often responds in English to his teachers. After her full assessment, SLP1 could not determine if Student's communication difficulties were a language disorder or a language barrier.³¹² (In Student's April 2017 IEP, however,

³⁰⁷ FOF 31c; P-115, 118.

³⁰⁸ P-226-279; 292-324; 349-393; 427-466.

³⁰⁹ FOF 12.

³¹⁰ FOF-3.

³¹¹ FOF-6.

³¹² Id.

Student's primary language is listed as English, a direct contradiction to the findings of pathologist.³¹³ Inexplicably, Student's 2020 IEP indicates that Spanish is Student's primary language³¹⁴. District's bilingual specialist, who did not testify, assessed Student's listening and speaking to determine his English language proficiency ("Access Test").³¹⁵ On the Access Test Student scored a one. There was no score explanation or interpretation provided by Morales, and the K-1 teacher credibly testified she did not understand the meaning of the score.³¹⁶ Evidence shows that Student was given the Access Test on four occasions, scoring level 1, no supporting documents, no interpretation, no explanation.³¹⁷ Each of the four IEPs in question list Student's Access Test scores as level one, yet each of those IEPs fail to call for the District bilingual specialist, or anyone else, to provide any consultative or actual bilingual specialist to explain the test results and address the question that clearly exists – can Student comprehend and respond in either English or Spanish?³¹⁸ Both Student's K-1 Teacher and School Counselor testified that Access Test results were never discussed at Student's IEP meetings,³¹⁹ and there is no evidence offered that an English Language Learner instruction plan was ever included in Student's IEPs. Also, a bilingual specialist never attended any of the Student's IEP meetings, though [REDACTED] policies require his attendance.³²⁰ Dr. [REDACTED] indicated in her report the Access Test administered by the District was an abbreviated screening version, and that Student

³¹³ FOF-11.

³¹⁴ FOF-27b.

³¹⁵ FOF-14, 15.

³¹⁶ Id.

³¹⁷ p-227,295,352,428.

³¹⁸ Id.

³¹⁹ FOF-14.

³²⁰ Id.

needs to be administered the full version of the Access Test to determine the extent of bilingual instruction Student needs at this time.³²¹ In sum, Student is a Spanish speaker coming from a Spanish-speaking home, who is being educated in English with the assistance of a Spanish-speaking paraprofessional. The evidence shows that Student's communication skills have regressed in his three years of school, going from stating his name and age and being able to follow simple directions at age five, to now responding to teachers and others with incoherent mumbling.³²² Dr. [REDACTED] testified that Student is now so removed from the language-speaking world that he needs to be returned to a place where language matters.³²³ The District has clearly failed in providing adequate bilingual testing and bilingual education for this Student.

Third, the District failed to include measurable functional goals in Student's IEPs to meet his needs and allow him to make progress in his curriculum. Annual goals should address a student's unique needs resulting from his particular disability. *Letter to New*,²¹¹ IDELR 464 (OSEP 1987). One of Student's most critical needs, as indicated above, is the ability to communicate and understand language. However, there is only one speech/language goal included in each of four IEPs in question that in any way addresses Student's language problems, and the evidence shows that those goals were not measurable, not tailored to Student's unique needs, and didn't help him progress in his curriculum. The four individual speech language goals are almost identical in content, calling for Student to "verbally make comments about stories' characters and events" and "describe the story" after being given "minimal cues."³²⁴ The four goals,

³²¹ P-117.

³²² FOF-30.

³²³ Id.

³²⁴ P-247,311,369,455.

using virtually identical wording, written for four IEPs drafted over a two year period, are certainly not uniquely drafted to address Student's changing needs relating to Student's ability to communicate, particularly when, as noted previously, Student's comprehension and language skills have regressed over that two year period.

Additionally, there is no description in any of the IEPs concerning how Student's progress toward meeting these speech/language goals is to be measured, as well as no description of the present level of performance. In fact, a SLP-2 testified that he was unaware of any present level of performance or baseline for the single speech/language goal in the April 2019 IEP and found this goal unmeasurable.³²⁵ Also, to properly draft a speech/language goal that appropriately addresses Student's communication problems, particularly when those problems are wedded to the issue of whether or not Student understands and verbalizes in Spanish, English, or both, the drafting necessarily would have needed the input of the bilingual specialist who administered the Access Test to Student. No bilingual specialist attended Student's IEP meetings.³²⁶

There are other deficiencies in goals contained in Student's IEPs. The District's 2017 occupational therapy evaluation of Student revealed many deficits Student had that limited his access to his educational environment³²⁷ – difficulty writing and drawing objects, dressing himself, sitting unsupported in a chair, sealing containers and bottles, and interacting inappropriately in an educational setting, such as failing to make eye contact, accept changes in school routine, and maintaining safety awareness. In response to these deficiencies, however, the District included only one occupational

³²⁵ FOF-21e

³²⁶ Stipulations

³²⁷ FOF-8

therapy goal in each of Student's IEPs: the occupational therapy goals included in 2018 and February 2019 IEPs consisted of a handwriting exercise that called for Student to trace his first name and then copy it. O/T's testimony that if a student completes the goal one time,³²⁸ student has met the goal requirement is questionable at best. Here, there is no evidence that this goal was ever achieved; yet the next goal O/T wrote for the April 2019 IEP called for Student to complete a five-word sentence copied from a model.³²⁹ There is no evidence that this goal was attempted, must less achieved; and the May 2020 IEP goal required Student to complete a classroom-based fine motor activity. There is no description in the IEPs concerning how Student's progress toward meeting these occupational therapy goals was to be measured. There was also evidence that Student had difficulty interacting with other students; but there was no goal for peer interactions ever included in Student's IEPs. In addition, there was evidence that Student had a problem with eloping, but the IEPs did not include a goal to deal with this problem.³³⁰ In fact, the goals contained in the 2018-2019 IEPs are essentially the same, indicating District's failure to adapt to Student's changing performance and needs. Inexplicably, in the 2020 IEP, the District dropped Student's BIP.

In sum, the IEPs the District developed for Student on May 2, 2018, February 26, 2019 April 29, 2019 April 15, 2020 consistently failed to provide Student with the appropriate placement, instruction, and goals to address Student's special education needs, and those failures outlined above impeded his education and preventing him from making progress appropriate in the light of his unique circumstance. Throughout

³²⁸ FOF-21f

³²⁹ FOF-21f

³³⁰ FOF-16i

the period Student's IEPs were in place, Student has regressed significantly in both in his retention of skills and ability to learn, as well as his use and understanding of language, which is vitally important to his ability to learn. Student is now academically well behind his same-age peers, and has lost academic skills – such as letter, number and color recognition – which he previously possessed, negatively impacting his learning. Student's IEPs have failed to address that regression, thus denying Student a FAPE. This IHO finds that Parents have met their burden on this issue.

III. Issue Three (withdrawn)

IV. Whether Parents were prevented from being equal participants in the May 2, 2018, February 26, 2019, April 29, 2019, and April 15, 2020, IEP meetings due to the District failing to provide Parents with complete and timely information about Student's program, placement, and provision of FAPE to Student.

Parents next allege that the District denied them the opportunity for meaningful participation in the development of Student's IEPs.

The IEP is developed by an "IEP team" comprised of the disabled child's parents, teachers from the child's school, as well as special education teachers and providers. 20 U.S.C. §1414(d)(B). The IEP team is required to review the child's "IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child had been achieved," and revise the IEP if needed. 20 U.S.C. § 1414(4)(A)(i - ii). As members of the IEP team, parents play "a significant role" in the IEP process (*Schaffer v. Weast*, 546 U.S. 49, 53 (2005), and their participation in that process "must be more than mere form; it must be meaningful." *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004). Parents are entitled to participate in "the substantive formulation of their child's educational program" and the IEP team is required "to take into account

any concerns parents have for enhancing the education of their child when it formulates an IEP”. *Winkelman v. Parma City School District*, 550 U.S. 516, 529 (2005).

Uncontradicted evidence that Parent would be told where Student would go to school establishes that the initial placement of Student in the cluster program at AECES occurred outside of the IEP meeting.³³¹ The 2017 IEP clearly indicates Student was a general education Student, and the reason Student was initially placed in the District cluster classroom with a significantly modified curriculum is not at issue in this case. What is at issue is why and, more importantly for this issue, how and when the District determined Student would remain in the cluster placement when transferred to PPGS.. There is no evidence, either testimonial or documented, that any other placement was considered or discussed by the IEP team. No explanation was provided by the District for the PPGS placement. Once the placement was made it was never reviewed. In fact, the testimony presented indicated that the continuum of placements available could not be discussed and considered because a District representative was not present at the February 2019 IEP.

The evidence has shown that the District, with callous disregard for the Parent’s procedural rights, collected behavioral data to justify a paraprofessional, without notifying Parents or obtaining authorization. The discussion regarding Student’s 2018 IEP was so perfunctory that Mother misunderstood the FBA/BIP process and the purpose of the paraprofessional request, and believed Student was getting additional academic assistance, which was completely wrong. Additionally, the IEP acknowledges Parents’ academic concerns about Student not being prepared for first grade without discussing or addressing the concerns.

Even more concerning, during the 2018-2019 school year, the District continued to collect data on Student’s behavior, without parental consent or authorization, to formulate a

³³¹ FOF-11

new functional behavior assessment. The evidence shows the Mother or Father were often present assisting Student, and there was no explanation even attempted by the District regarding the failure to inform the Parents. The Mother's credible testimony indicates that the first time she was made aware of the frequency of Student's behavioral incidents was at the February 2019 revision IEP meeting, which was held solely to attempt to comply with IDEA, and to document the District's decision to provide dedicated paraprofessional support to Student in all areas.

IDEA regulations require a school to provide Parents a progress report on Student's IEP goals.³³² Even District witnesses admit that progress reports are critical in determining whether Student is meeting the IEP goals. The Parents established the District Progress Report for the fourth quarter 2018-2019 school year has been altered. The District document and the Parent document should be identical, and they are not. They appear to be altered and dated (differently) in Parents and District records. They appear to be reports issued by the K-1 teacher. However, by her own testimony she was on maternity leave in June 2019. S-Counselor credibly testified you need administrative approval to alter documents in the District's system. The District made no attempt to explain the discrepancy.

The evidence for this issue substantiates that the District failed to properly include Parents in the IEP development process in accordance with IDEA. This IHO finds that Parents have met their burden on this issue.

V. Whether the District's failure to complete the evaluations identified and agreed to in the February 5, 2020 domain and discuss them at an IEP meeting within a sixty (60) school day timeframe denied Student a FAPE.

On March 27, 2020, the United States Congress passed the Coronavirus Aid,

³³² 34 CFR 300.320.

Relief and Economic Security Act (“CARES “) (Pub L No. 116-136, 134 Stat. 281. CARES effected modifications to laws and regulations governing many areas, including education. “Congress allowed the Secretary [education] to waive select, specifically-enumerated statutory and administrative rules. Id §3511(a), (b). Not included was the IDEA/Rehabilitation Act that school district provide a free and appropriate public education.” Congress instructed the Secretary to recommend “any additional waivers...the Secretary believes are necessary to be enacted into law o provide flexibility to States and local educational agencies to meet the needs of students.” Id§3511(d)(4).

The Secretary did not include a recommendation that the learning plan requirements be waived. Id. The Secretary explicitly stated that “[t]he Department is not requesting waiver authority for any of the core tenets of IDEA.” Id at 14 The Department’s position was based on the following “principles”: Schools can and must provide education to all students, including children with disabilities; The needs and best interests of the individual student, not any system, should guide decisions and expenditures. *Chicago Teachers Union v. Devos*, ND of Illinois, 20 CV-02957, June 19, 2020.

The IDEA 20 USC §1414 (a) governs evaluations and re-evaluations. The Illinois Administrative Code specifies: when a parent requests an evaluation of their child under the IDEA and the school district agrees to perform an evaluation, the district has 60 school days, from the date the of the parent’s written request, to perform the evaluation, determine the child’s eligibility and hold IEP meeting to discuss the evaluation. 23 Ill. Admin. Code 226.110(d). “If fewer than 60 school days remain in the school year after

the date of parental consent, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year.” Id.

Absent an agreement between the parent and the district, there is no flexibility on timelines due to COVID-19. ISBE SPED-FAQ dated 04-20-20; ISBE Frequently asked Questions for Special Education on the Transition to In Person Instruction, Last Updated June 30, 2020 (Parents Ex. 88, pages 1152-1163). “Districts must adhere to timelines for annual IEP meetings and required evaluations. Illinois State Board of Education, “Starting the 2020-21 School Year, June 23, 2020, Part 3 Transition Joint Guidance. (Parents Exhibit 87, p. 1113.)

“The failure to complete all necessary evaluations results in a substantive denial of FAPE which results in harm to the disabled child.” *Long v. District of Columbia*, 780 F. Supp. 2d 49 (D.D.C. 2011).

There is no dispute in this case that the COVID-19 pandemic has impacted the educational process. The District repeatedly argued that it was unable to complete Student’s evaluations due to the pandemic. While the Hearing Officer is sympathetic to the District’s argument. Sympathy, does not change the law.

The Parents provided consent for Student’s re-evaluation on February 6, 2020.³³³ Even providing the District maximum consideration, including Gubernatorial “Act of God” dates, and the District’s reopening date of April 13, 2020, Student’s re-evaluation would be due on June 8, 2020.³³⁴ Other than the Social Work evaluation, which was

³³³ FOF-24

³³⁴ FOF-26

completed timely but never considered at an IEP meeting,³³⁵ the District has offered no evidence, that it attempted to complete Student's re-evaluation.

“School authorities cannot properly address problems which they do not understand.” *Bd. Of Educ. of Pak Park and River Forest High School Distr. No 200 v. Illinois State Board of Educ.*, 21 F. @upp. 2 862, 870 (N.D.Ill 1998). Evidence demonstrates that Student's April 2020 IEP is based entirely on Winter 2017 evaluations. Therefore, in light of Student's established pattern of regression, Student's educational IEP programming, without updated evaluations, could not be calculated to provide any educational benefit to Student.

This IHO finds that Parents have met their burden on this issue.

VI. Whether the District prevented Parent from meaningful participation in the April 15, 2020 IEP meeting by denying her equal access and opportunity to participate by video conference as was provided to the school district staff, instead advising her that she could only participate by telephone.

When enacting IDEA, Congress specified the members of the Individualized education program team, the very first member identified are the “parents of a child with a disability;” 20 USC 1414(d)(1)(B)(i) “Procedural inadequacies that result in the loss of educational opportunity, or seriously infringe on the parents’ opportunity to participate in the IEP formulation process, clearly a result in the denial of FAPE.” *W.G. v. Target Range School Dist.*, 960 F.2d 1479, 1484 (9th Cir. 1992).

The evidence demonstrates, the IEP notification for the April 15, 2020 IEP meeting clearly specified ‘Location-virtual meeting-Phone’.³³⁶ The Mother credibly testified she

³³⁵ FOF-25 and 27.

³³⁶ FOF-27

was only given a phone number and access code. Further, Mother did not realize that the rest of the team may have been using video until her Attorney pointed out the similarity of the April 15 IEP meeting and the June 10, 2020 IEP meeting.

Even during in-person IEP meetings, Mother testified she would participate by telephone.³³⁷ This was not out of the ordinary. There was no testimony that at the April 2020 meeting, Mother asked to be present via video conferencing, and the request was denied by the District. Best practices by the District would have dictated to invite all IEP team members in the same manner. However, participating by telephone, as Mother had done previously, does not amount to a serious procedural inadequacy resulting in a denial of FAPE.

This IHO finds that Parents have not met their burden on this issue. The District prevails.

VII. Whether the District’s failure to consider other types of placement for Student in the May 2, 2018, February 26, 2019, April 29, 2019, on April 15, 2020 IEPs and continued Student’s placement in a cluster classroom denied him a FAPE.

The IDEA contemplates that a FAPE will be provided to handicapped students in most instances in “regular public schools, with the children participating as much as possible in the same activities as nonhandicapped children, but... also provides for placement in private schools at public expense where this is not possible.”

Burlington School Comm. v. Mass. Dept. of Educ., 471 U.S. 359, 369 (1985).

Schools are required to educate disabled students with their non-disabled peers in the least restrictive environment (“LRE”) in regular classroom settings, to the

³³⁷ FOF-16

maximum extent appropriate. 34 CFR § 300.114 (a). Placement in special classes or separate schools, or other removal of children with disabilities from the regular educational environment, should occur only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. 34 CFR § 300.114 (a)(2)(ii). The LRE mandate, however, does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student, and a more restrictive program is likely to provide such benefit, then the child is entitled to be placed in the more restrictive program. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2nd Cir 2008). The Illinois School Code also requires that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill Admin. Code 226.240.

An educational placement refers to the provision of special education and related services rather than to a specific place, such as a specific classroom or specific school. Every school district is required to have a continuum of placements available for all disabled students. 34 CFR § 300.115. In determining the educational placement of a child, each public agency must ensure that: 1) the placement decision is made by a group of people, including the parents, who are knowledgeable about the child, and who have considered all available evaluation data concerning the student, as well as all placement options available; and 2) is made in conformity with the LRE provisions. 34 CFR §300.116(a)(1)(2).

Parents are essential part of any group making the placement decision for their disabled child, and a school district must ensure that the parents are members of educational placement team and participate in the group's decision on their child's

placement. 20 U.S.C. § 1414 (e); 34 CFR §300.116(a)(1); 34 CFR §300.501(c). And while the team does not have to adopt the parents' views of placement of the child, it must give due consideration to the parent's input. *J.E. v. New York City Dept. of Educ.*, 69 IDELR 93 (S.D.N.Y. 2017). Failure to give meaningful consideration to the parents input on the issue of placement can amount to a denial of FAPE. *Penny B. v. Las Vargenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008)

The factors to be considered by the IEP team in determining the LRE include: the proximity of the placement to the child's home; whether the child is educated in the school that s/he would attend if nondisabled (unless the IEP requires some other arrangement); and any potential harmful effect on the child or on the quality of services that s/he needs. 34 CFR §§300.116(b), (c), and (e). The LRE for each student must be made by the IEP team based on this analysis. This is not an option for the team. This is an IDEA requirement.

Student's 2017 IEP determined Student was a general education student in the "inclusion setting".³³⁸ There was no testimony to define what the District considers an "inclusion setting". The Mother's credible testimony was that there was no discussion regarding Student's placement,³³⁹ Student was assigned to AECES. The [REDACTED] website states that AECES offers appropriate services in both inclusion and pull out programs.³⁴⁰ Beginning in September 2017, Student's physical location of services returned to PPGS and Student was placed in the English-speaking Kindergarten cluster classroom.³⁴¹ Pursuant to the District's own guidelines, the cluster classroom is intended

³³⁸ FOF-11a.

³³⁹ FOF-11a

³⁴⁰ Schoolreports [REDACTED] edu

³⁴¹ FOF 12.

for student's with cognitive delays needing a significantly modified curriculum.³⁴² As previously noted in this opinion, there is no evidence Student has a cognitive delay. The cluster classroom does not provide any research-based instruction for students with autism.³⁴³ Between April 2017 and September 2017, there was no IEP meeting, making it impossible for the IEP team to have considered and discussed Student's cluster classroom placement as the appropriate placement for Student. The District presented no testimony to establish who chose this program, and whether it was comparable to the program at AECES. In fact, several District witnesses admitted Student's placement in the cluster program violated the District's own guidelines.

The 2017 LRE grid rationale, placing Student in special education for over 60% of the day, indicates Student's placement in a general education setting with supplementary aides and services, was rejected because it was attempted and found not to meet Student's academic needs.³⁴⁴ How is this possible? There is no evidence that he had any aide or services prior to the eligibility meeting. Until Student was found eligible for special education, Student would not be provided with supplementary aides or services. The evidence establishes that the possibility of educating Student in the LRE was dismissed by the District at Student's initial IEP meeting without a discussion of the continuum of special education placements, without consideration of the quality of services Student needed, and any potential harmful effect the placement would have on Student. There is no evidence that this placement was discussed with the IEP team or the Parents. There is no evidence that the move back to PPGS provided Student with

³⁴² FOF 12.

³⁴³ FOF 12.

³⁴⁴ FOF 11a.

the same level of services as previously received at CGS or that the IEP team agreed to a cluster program placement.

At the May 2018 IEP meeting, it was apparent Student was regressing. Student's behavior had declined to the point where he needed a dedicated paraprofessional to assist with behavior, his Parents were expressing academic concerns, his progress was inconsistent and after one year in this placement, Student had lost the ability to identify letters in Student's name.³⁴⁵ Student's physical ability to be available for education was in decline, and Student had lost the ability to properly grasp writing utensils. There is no evidence that there was any discussion regarding whether the LRE in the cluster program was proper for this Student or what impact it was having on Student's newfound behavioral issues. Even though the evidence establish Student was not receiving any benefit from his cluster classroom education, there was no discussion about whether Student should be returned to general education classes with an FBA, BIP and dedicated aide, or whether Student needed a more restrictive environment.

Nine months later, eight months after the K-1 teacher was notified that ABA therapy had been stopped, five months after the Student began drug therapy, and following the gathering of additional behavioral and academic data, the District held an IEP meeting to "revise" Student's IEP.³⁴⁶ The singular revision consisted of a pre-approved extension of a shared academic paraprofessional to a dedicated paraprofessional. This was not a true IEP meeting, this was a rubber stamp on what the District had decided to provide for Student. To discuss an additional, perhaps more restrictive placement on the LRE continuum a District Representative needed to be

³⁴⁵ FOF-16

³⁴⁶ FOF-19.

present-there was not one present, the C/M was present in a dual position but did not have the authority needed to authorize any additional placement.³⁴⁷

The totality of the evidence presented confirms that there was no discussion about educating Student to the maximum extent appropriate with children without disabilities. The District placed Student in a classroom for student's with cognitive disabilities and expected him to thrive, and when that did not happen the District failed to have any IEP team discussion about where a satisfactory education could be provided. The failure to consider the full continuums of placement denied Student a FAPE. This IHO finds that Parents have met their burden on this issue.

VIII. Whether the District failed to implement the April 29, 2019 and April 15, 2020 IEPs remotely during that period of Student's e-learning, thereby denying Student access a FAPE.

As previously discussed, The Federal Department of Education and the Illinois State Board of Education, did not modify the rules regarding the provision of FAPE to Students with disabilities during the pandemic. ISBE guidance suggests that the proposed remote learning plan be completed as soon as possible to ensure services. The District scheduled the review of Student's remote learning plan for June 10, 2020. This was almost eight weeks after remote learning began and less than ten days prior to the end of the school year. The Student's class consisted of nine students, they received only 15 minutes per day of education using Google Hangouts.³⁴⁸ The District offered no explanation why it needed a long delay, April 13 to June 10,³⁴⁹ to consider Student's

³⁴⁷ FOF-20

³⁴⁸ FOF-33

³⁴⁹ FOF-34

remote education plan, and offered no credible explanation for why, as of the date of the hearing, no remote plan had been developed for the Student. Without having a remote plan for education, there is no basis for reduced services. I find that the services Student received were in appropriate.

This IHO finds that Parents have met their burden on this issue.

IX. Whether the District failed to schedule an IEP meeting within ten (10) days of the July 24, 2020 receipt of the May 2020 Independent Education Evaluation (“IEE”) done at private expense by Dr. [REDACTED] resulting in a lack of timely consideration of the IEE by the IEP team and a denial of FAPE to Student.

If a parent obtains an IEE for their child and shares it with the school district, the results of the evaluation must be considered by the district in “any decision made with respect to the provision of FAPE to the child.” 34 CFR § 300.502(c)(1). Within 10 days of receiving a report of an IEE, a district must provide written notice to the parents stating the date the IEP team will meet to consider the IEEs results. 30 Ill. Admin. Code § 226.180(d). A delay in considering an IEE containing “a thorough assessment of [a child’s] academic deficits and many important recommendations regarding re-formulating his IEP so that he might achieve the education and skills he will need to become a productive member of society” substantively harms the child’s right to a FAPE. *Hill. v. District of Columbia*, Case No. 14- cv-1893, 2016 WL 4506972, p. 16 (D.D.C. August 26, 2016).

The Parents have established through the Mother’s credible testimony and the evidence presented that a copy of the Dr. [REDACTED] was presented to the District, through

District's Attorney on July 24, 2020.³⁵⁰ As of the date of hearing the District IEP team had not been convened to consider the results of the IEE. This is a clear violation of IDEA and the Illinois Administrative Code and denied the Student the right's to a FAPE. This IHO finds that Parents have met their burden on this issue.

COMPENSATORY EDUCATION

Under the theory of compensatory education, the Courts have awarded educational services prospectively in order to compensate for past deficient programs.³⁵¹ Not every IDEA violation “warrants compensatory education relief. *Teton Cmty. Consol. Sch. Dist. No. 65 v. Michael M.*, 356 F. 3d 798 (7th Cir. 2004) There are two competing approaches regarding the award of compensatory education. The 7th Circuit has not enunciated any guidelines concerning which approach to use to award compensatory education.

The first approach is the quantitative approach. The quantitative approach provides that a child is entitled to compensatory education “for a period equal to the period of deprivation but excluding the time reasonably required for the school district to rectify the problem.” *Mary T. v. School District of Philadelphia*, 575 F.3d 235, 248 (3rd Cir. 2009). This approach uses a formalistic calculation for a compensatory education award. The calculation requires the period of time for the FAPE denial to be assessed, and it must be determined when the school district knew of should have known of the denial of the FAPE. *Id.* at 248. The calculation must exclude the time reasonably required for the school district to remedy the problem. *Id.* This approach has been rejected by the Sixth, Ninth, and Eleventh Circuits. The Northern District of Illinois has also rejected the Qualitative approach in favor of a ‘flexible, individualized approach more consonant with the aim of IDEA. *Petrina W. v. City of Chicago Public School District 299*, 53 IDELR 299 (N. D. IL, 2009).

³⁵⁰ FOF-35.

The Court ruling in *Petrina* is in line with the qualitative standard adopted by the D.C. Circuit in *Reid v. District of Columbia* 43 IDELR 32 (D.C. Cir 2005). In *Reid*, the Court rejects the Third Circuit’s “cookie cutter” approach explaining this approach “runs counter to both the broad discretion afforded by IDEA’s remedial provision and the substantive FAPE standard that provision is meant to enforce. The award should be fashioned on individualized assessments and not a mechanical hour counting. Under *Reid*, the determination is based on the facts of each individual case and the award should be reasonably calculated to provide the educational benefits that likely would have accrued if the school district had initially provided the child with the necessary special educational services. The Hearing Officer must make a fact-intensive analysis that is qualitative. *Branham v. D. C.*, 427 F. 3d 7, 11 (D. C. Cir. 2005) Under this approach, the Hearing Officer is also required to consider the school district’s conduct and the parent’s conduct in calculating the award. *Petrina* The Hearing Officer must also determine the period the child was denied FAPE and what the denials of FAPE were. *Petrina* The Court found the proper question is how much compensatory education is necessary to restore the child to the position the child would have been if the school district had provided the child with a FAPE during the time period in which the child was deprived of a FAPE. *Petrina*

The Northern District of Illinois Court found the proper question is how much compensatory education is necessary to restore the child in the position the child would have been if the school district had provided the child with a FAPE during the time period in which the child was deprived of a FAPE. In this case, the Parents are seeking compensatory education as a remedy for the District’s failure to provide Student with a FAPE for the two (2) years prior to the filing of the due process complaint, failure to timely and appropriately evaluate Student, failure to conduct Student’s triennial re-evaluations, and failure to consider Student’s 2020 neuropsychological re-evaluation.

The evidence in this case has shown that Student’s IEPs for the years 2018, 2019, and 2020, failed to provide Student a FAPE. The IEPs did not provide Student with goals that were measurable, the goals provided did not include present levels of academic achievement and functional performance, and did not include goals in all areas of Student’s need. The IEPs did not include goals to address Student’s behavior

problems, possible limited English proficiency, and academic and physical regression. The IEP did not provide Student with a proper placement in a class with specific instruction geared toward students with autism, choosing instead to place Student in an environment where he was treated as cognitively impaired. The District failed to obtain Parental authorization to perform an FBA, failed to explain the IEP procedures well enough so Parents understood the importance of sharing private evaluations with the IEP team, failed to include Parents in the placement discussion, and failed to address Parent's academic concerns. The District failed to provide Student with a complete English language assessment, failed to have a bi-lingual specialist present at IEP meetings, and failed to take the assessments that were provided into account when drafting the IEPs. It failed to update assessments when Student exhibited signs of regression. The District failed to provide Student with an auditory evaluation after the initial evaluation proved inconclusive, and failed to timely complete Student's triennial re-evaluations. The District failed to timely offer a remote learning plan and ultimately failed to provide any remote learning plan. The District's speech/ language, occupational therapy, and ELL assessments are found to be incomplete and inconsistent. Finally, the District failed to timely consider Student's private neuropsychological evaluation.

The District's own witnesses admitted many of these failures, and those that were not admitted were not explained. The Parents have shown, through testimony, private evaluations, and District evaluations and IEP documents that after three years of District education and services, Student has regressed from a child who was able to identify his name and age, repeat short phrases, and hold a pencil; to a child who does not respond, cannot identify his own name, cannot hold a pencil, and exhibits self-injurious behaviors. Although the Parents continued to provide Student with private therapy and assessments, with the exception of notifying the District about discontinuing ABA therapy, there is no evidence Parents provided Student's updated information to the District. These omissions did not contribute toward the District's failure to provide FAPE, the obligation is on the District, not on the Parents to provide Student with the necessary assessments to determine Student's needs and address regression.

Based upon the Parents' expert's unchallenged testimony, Parents are seeking: two years of ABA therapy at 25 hours a week by a provider selected by Parents; funding for an occupational therapy re-evaluation, speech language re-evaluation, FBA evaluation, Central Auditory Processing Disorder ("CAPD") evaluation, and assistive technology, and Augmentative/Alternative communication assessment.

The Parents have met their burden in proving the District failed to provide FAPE. Based on the needs identified by Dr. [REDACTED] and her recommendations for evaluations, services, and placement. Student is entitled to receive compensatory education in the form of a placement at a private school through ESY 2021, and additional assessments/evaluations as specified in the Order.

ACKNOWLEDGEMENT

This IHO believes Student would have more participatory opportunity with other students in a bilingual environment. I have intentionally not inserted a bilingual education requirement into the Order to allow more options in the selection of Student's private school.

ORDER:

1. The District shall convene an IEP meeting by October 7, 2020 to revise Student's IEP to a placement at a Private School ("PS"). The District shall place Student, by October 15, 2020 at a PS which provides programs specific to the needs of children with autism, and must include the following components: specific, research based reading intervention; small student/teacher ratio; existing structured full day and year-round curriculum; specific and intensive research-based intervention using ABA therapy, a bilingual education program or a dedicated bi-lingual paraprofessional, and is approved by ISBE.³⁵² Student shall remain at a private school placement through the completion of the 2021 school year and 2021 extended school year services.

³⁵² It is understood that some PTS are providing instruction through remote learning, if the school meets the requirements of this Order, and can provide an appropriate education for Student, remote learning will not violate this order.

2. The District shall, by October 15, 2020, conduct Student's full Access testing (not the alternate screener version), this testing shall be administered by certified instructional personnel who have completed the WIDA Screener training and in accordance with the manufacturer and ISBE recommendations. The results of the testing, and any data or materials used during the testing shall be provided to the Parents and Student's PTS by October 20, 2020.

3. The District shall contract with Student's PS to conduct a Functional Behavior Analysis by a certified BCBA, or if PS is unable to provide this assessment, with an Independent ABA provider. The results of this assessment must be reviewed at an IEP meeting, including the PS by the IEP team, to which the Independent ABA provider has been invited (if applicable) to determine if Student requires a behavior intervention plan and/ or additional private ABA therapy. If the IEP team recommends additional private therapy, the District shall provide that therapy, in accordance with the IEP team's recommendations, through October 15, 2021.³⁵³

4. The District shall, by October 15, 2020, contract with an Independent ABA provider, to provide Student with interim ABA services of 25 hours per week of ABA therapy, with a therapist certified in ABA, until the completion and review by Student's IEP team of Student's Functional Behavioral Analysis (provided for in Paragraph 3 above).

5. On or before, October 23, 2020 the District shall convene an IEP meeting at, or including, Students PTS, to review the results of Student's ACCESS testing, and to determine what assessments Student needs and which language(s) should be used to conduct the assessments, at a minimum these assessments must include an occupational therapy, physical therapy, speech and language, AT, Augmentative and Alternative Communication, and Central Auditory Processing Disorder. Dr. [REDACTED] is to be invited to the meeting, if Dr. [REDACTED] is not available, her observations and recommendations from the May 2020 Comprehensive Developmental Neuropsychological Evaluation Report are to be considered.

³⁵³ IHO intentionally did not include a specific date of compliance, due to possible remote learning, the FBA may take longer than normally anticipated.

6. The District by November 1, 2020 is to fund any assessments requested by the IEP team in accordance with paragraph 5 above, through independent providers chosen by the IEP team. The evaluations must be completed by December 10, 2020.
7. Within ten (10) calendar days after receiving all of the independent assessments provided for in paragraph 5 above, the District shall reconvene an IEP meeting to review all evaluation results and recommendations. Each of Student's independent evaluators, including Dr. [REDACTED] is to be invited.
8. The District shall fund each of the evaluators to participate in the IEP meeting specified in paragraph 5 above.
9. The District shall provide Student with transportation, including a transportation aide if deemed necessary by the IEP team, during the placement at PTS.
11. The District shall reimburse the Parents for the cost of the Comprehensive Developmental Neuropsychological Evaluation Report conducted by [REDACTED] PhD. in May 2020 in the amount of Four thousand, six hundred (\$4,600.00) dollars by October 29, 2020.
12. The District shall provide a Spanish translator to assist the Parents at all IEP meetings, whether in-person, telephone, or video conferencing, unless the Parents, in writing waive the translator.
13. The District shall provide proof of compliance with his order within thirty (30) days of the date of this Order.

Dated: September 29, 2020

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]

Within 45 calendar days of receipt of this Order, the Board of Education of the City of [REDACTED] School District [REDACTED] shall submit proof of compliance to:

Illinois State Board of Education, Program Compliance Division, 100 N. First St.
Springfield, IL 62777-0001

NOTICE OF RIGHT TO REQUEST CLARIFICATION

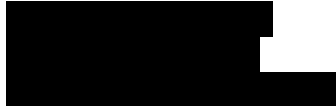
Pursuant to 105 ILCS 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street., Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: September 29, 2020

/S/Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer



Appendix “A”

WITNESS NAME	TITLE	SCHOOL	ACRONYM
[REDACTED]	Mother		Mother/Parent
[REDACTED]	Speech Language Pathologist	[REDACTED] Grade School	S/L/P-1
[REDACTED]	Case Manager	[REDACTED] Grade School	C/M
[REDACTED]	Speech Language Pathologist	[REDACTED] Grade School	S/L/P-2
Dr. [REDACTED] Ph.D	Licensed Clinical Psychologist	Pediatric Consultation Center & Associate	Dr. [REDACTED]
[REDACTED]	District Representative	[REDACTED]	D/R
[REDACTED]	School Social Worker	[REDACTED] Grade School	S/W
[REDACTED]	Kindergarten- First Grade Special education teacher	[REDACTED] Grade School	K-1 Teacher
[REDACTED]	School Counselor/Prior Case Manager	[REDACTED] Grade School	S-Counselor
[REDACTED]	Vice President of School Programs	[REDACTED] Academy	VP-LF
[REDACTED]	Second Grade special education teacher	[REDACTED] Grade School	2 nd Grade teacher
[REDACTED]	Pre-K teacher	[REDACTED] Elementary School	Pre-K teacher
[REDACTED]	Physical Education teacher	[REDACTED] Grade School	Phys-Ed T
[REDACTED]	Licensed Occupational Therapist	[REDACTED] Grade School	O/T
[REDACTED] Elementary School		[REDACTED]	PPGS
[REDACTED] Early Childhood		[REDACTED]	B-C
[REDACTED] Elementary School		[REDACTED]	AECES
[REDACTED] Center		[REDACTED] IL	TMC

CERTIFICATE OF SERVICE BY EMAIL AND
CERTIFIED UNITED STATES POST OFFICE MAIL

I the undersigned, Mary Jo Strusz, certify that on September 29, 2020, a copy of the FINAL DETERMINATION AND ORDER, was served upon the following persons via email transmission by attached document in pdf format to the email addresses below and a copy of the printed document with original signatures were placed in the United States Postal Service, Certified Mail and address to the parties at the addresses below:

District:

[REDACTED]

Parents:

[REDACTED]

Illinois State Board of Education:

Mr. Andy Eulass
Due Process Coordinator
100 N. First St.
Springfield, IL 62777-0001
AEulass@ISBE.net

September 29, 2020

/s/ Mary Jo Strusz
Mary Jo Strusz, Impartial Hearing Officer

[REDACTED]